Supreme Court, U.S.
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No._____

IN THE
Supreme Court of the United States

ADNAN ALHILAWI,
Petitioner,

v.

STATE OF ALASKA,
Respondent.

On Petition for a Writ of Certiorari to the Alaska Supreme Court

PETITION FOR WRIT OF CERTIORARI

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82 pp

QUESTIONS PRESENTED

1. Whether respondent, State of Alaska, Courts, violated Res Judicata and petitioner's Eighth Amendment rights by imposing and upholding conditions of release and bail on petitioner after he had served the required sentence?

2. Whether it is an actionable violation of the Fourteenth Amendment when respondent, State of Alaska's Court System Judges repeatedly denied petitioner due process?

3. Whether respondent, State of Alaska, is guilty of actionable conspiracy when actions and interactions of petitioner's trial counsel, District Attorney and Trial Court Judge demonstrate conspiracy?

4. Whether respondent, State of Alaska, violated petitioner's right to protection from self-incrimination, assured under the Fifth Amendment, by alluding, in closing argument, to the petitioner's failure to testify in his own behalf?

5. Whether respondent, State of Alaska, violated petitioner's Fourteenth Amendment right to equal protection of law when they guided plaintiff in fabricating a stalking case?

6. Whether it is a violation of the Fourteenth Amendment right to due process for respondent, State of Alaska, to bar petitioner from introduction of claims on appeal based on fact that defense attorney declined or failed to bring forth issues of fact, law, or rights violations during trial?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES.....	iv
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL PROVISION INVOLVED.....	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE PETITION.....	15

I. THE ALASKA SUPREME COURT HAS DECLINED TO ACT ON A CASE INVOLVING MULTIPLE CIVIL RIGHTS VIOLATIONS AND UNJUST ACTS PERPETRATED BY THE STATE OF ALASKA DEPARTMENT OF LAW AND COURT SYSTEM.

CONCLUSION.....	21

APPENDICES:

A. Decision of State of Alaska Supreme Court Denying Review.....	22
B. Decision of State of Alaska Court of Appeals Denying Review.....	24
C. Petitioner's Petition for Hearing to the State of Alaska Supreme Court.....	26

D. Opinion and Judgment of the State of Alaska Superior Court..... 37

E. Petitioner's Memorandum in Support of Points on Appeal to the State of Alaska Superior Court..... 42

F. Opinion and Order of the State of Alaska Court of Appeals regarding the Condition of Release..... 64

G. Petitioner's Petition for Hearing to the State of Alaska Court of Appeals regarding imposition of unlawful, unconstitutional conditions of release on Petitioner by State District and superior Courts.. 67

TABLE OF AUTHORITIES

CASES **Page**

Miranda v. Arizona, 384 U.S. 436, 444, 478-79 (1966) 15

Wilson v. United States, (1893) 149 US 60,372 Ed 650, 13 S CT 614 16

McBeth v. State, 652 P.2d.120 (Alaska App. 1982) 16

Griffin v. California, (1965) 380 US 610-11, 14L ED 2nd 106, 85 S CT 1229 16

Furman v. Georgia, 408 U.S. 238 (1972) 18

Hernandez v. Texas, (1954)347 US 475, 98L ED 866,74 S CT 667 18,19

STATUTES

28 U.S.C. § 1257(a)..... 2

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PETITION FOR WRIT OF CERTIORARI

Adnan Alhilawi respectfully petitions for a Writ of Certiorari to review the decision of the Supreme Court for the State of Alaska entered in this proceeding on November 1, 1999.

OPINIONS BELOW

The order of the Alaska Supreme Court, reproduced and attached to this Petition as Appendix A, is unpublished. The order of the Alaska Court of Appeals, reproduced and attached to this Petition as Appendix B, is unpublished. The opinion of the Alaska Superior Court reproduced and attached to this Petition as Appendix D, is unpublished.

JURISDICTION

The Supreme Court of the State of Alaska entered its order of denying discretionary review on November 1, 1999. This petition was filed within 90 days of the Alaska Supreme Court's order. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United State Constitution:

> No person... shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...

The Eighth Amendment to the United State Constitution:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United State Constitution:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The offense in this case is concerned with the well-intentioned sending of flowers and friendly notes, jokes and other inoffensive e-mail messages to Ms. Tobie Putman, plaintiff, who, at the outset, encouraged the attention. For a period of four months (September - December 1997), the petitioner, Adnan Alhilawi, and plaintiff communicated and associated in a friendly manner. It was only upon plaintiff learning that petitioner was married that her attitude changed. Even then, contrary to her testimony, she frequently presented herself in the lobby and cafeteria of petitioner's place of work, the same business establishments where she knew petitioner was likely to be at that time. On one occasion, January 12, 1998, petitioner visited the Alaska Permanent Fund Corporation (APFC) offices on behalf of an out of state friend interested in employment possibilities, at which time petitioner left his name and address with the receptionist. The next day Tim Jacobson, a friend of plaintiff Ms. Putman and Ms. Alison Browne, plaintiff's supervisor, was sent to visit petitioner at his office in the Federal Building where he threatened petitioner and told him to stay away from Ms. Putman. Petitioner called the police regarding this threatening visit to his office. Police reported they told Ms. Putman and Ms. Browne they shouldn't have done that, and warned Mr. Jacobson. The following day, January 15, a warning letter of half-truths and blatant falsehoods was received from the APFC, written by Ms. Browne and signed by Mr. Bushre for Byron Mallott, Executive Director. On the following day petitioner responded with a letter of similar tone pointing out that they were out of order in their actions and suggesting the possibility of a law suit (see Attachment # 5 of Appendix E). Plaintiff took offense when she and her supervisor received carbon copies of the letter sent by the petitioner to her employer with copies sent to many powerful officials.

As a result of all of this activity, petitioner was charged

with the misdemeanor crime of Stalking in the 2nd Degree, AS 11.41.270(a), arrested and convicted. From the time of arrest to the conviction, serving of sentence and appeal, a consistent pattern of procedural irregularities and violations of petitioner's Constitutional Rights emerged.

1. City and Borough of Juneau (CBJ) Police Officer Rayme Vinson met with plaintiff, Tobie Putman, April 1, 1998. Petitioner believes he advised her that if she stated she was in fear for her life, petitioner Alhilawi could be charged with stalking. Carrie Hulse of the District Attorney's office confirmed this to her.

2. CBJ Police Officer Rayme Vinson interviewed Alhilawi , on April 1, 1998 and recorded the interview without advising petitioner that he was recording their conversation. The tape recording was subsequently used during trial to refresh Officer Vinson's memory while testifying so that he could quote petitioner exactly.

3. CBJ Police Officer Paul Comolli arrested petitioner Alhilawi on April 14, 1998 and took him to Lemon Creek Correctional Center without advising petitioner of his Fifth Amendment Miranda right, and without providing him with a copy of the arrest warrant, then or subsequently, as required by Fourteenth Amendment.

4. Petitioner appeared in court for arraignment on April 14, 1998. He was without counsel due to lack of knowing the requirement or expectation and due to lack of being so advised by arresting Officer Comolli. Assistant District Attorney requested $5,000 bail, but when Judge Froehlich asked the Assistant District Attorney if petitioners' e-mail communication threatened plaintiff, the Assistant District Attorney said it wasn't of a threatening nature, so bail was lowered to $500 and third party custody was imposed. Petitioner was returned to jail due to lack of immediate

availability of third party custodian. In court again on April 16, 1998, Judge Froehlich raised bail to $1,000, dropped third party custody, and imposed conditions of release. Petitioner posted bail and was released, not under his own recognizance, but under the following conditions: a) House Arrest 6:00pm to 6:00am; b) Not to leave CBJ; c) No association or contact with plaintiff, Tobie Putman; d) Obey all State, Federal and Municipal laws and ordinances; e) Shall contact attorney and appear in Court; f) Shall be at work during working hours; g) Shall provide documentation to District Attorney that computer at work would be disabled by noon of April 20, 1998; h) and finally, Co-workers Ashraf or Caracol were required to notify CBJ Police Department if Alhilawi left work or contacted plaintiff Tobie Putman.

5. Petitioner contacted multiple lawyers, but all were aware of case and declined to accept as defense counsel. Patrick Conheady ultimately accepted to defend petitioner at next court appearance and trial. Conheady sought to schedule case to avoid Judge Froehlich. Froehlich refused to allow change.

6. Petitioner met with attorney Conheady on several occasions to try and inform him of every aspect of the activities that occurred between the plaintiff and himself. Conheady repeatedly advised petitioner not to worry this is not going to trial. Conheady also advised petitioner that the activities did not amount to "stalking" and that the Assistant District Attorney over charged him.

7. Conheady never expected the case to go to trial so he wasn't ready with his defense at the time trial proceedings began. About a month before the trial, Conheady asked petitioner if he would accept a plea bargain and take a lesser charge of "communication harassment". Petitioner advised Conheady that he would not accept the plea

bargain because the plaintiff and the Assistant District Attorney Brower fabricated the "stalking" charge since petitioner never stalked the plaintiff. Petitioner asked Conheady if he could file charges against the State for filing a false charge. Conheady said "yes", but that he would not help petitioner in a lawsuit against the State. From this moment on Conheady's attitude toward the petitioner changed and his performance during the jury selection and trial proceedings appeared as though he was working with the Assistant District Attorney and Judge Froehlich to obtain a conviction for "stalking".

8. Jury selection was on July 16, 1998. Over petitioner's voiced objections to Conheady, the selected jury was without peers of petitioner; i.e., no minorities represented. Four of the seven selected jurors worked in the same small office building as the plaintiff. One juror had a friend who had been stalked. One, Mr. Ricky, was a long time (30 years) friend of key prosecution witness, Alison Browne, as was defense attorney Conheady. Four jurors worked for the State of Alaska, as did the plaintiff. One juror had worked for Judge Froehlich as a babysitter. Judge asked the jury panel if anyone knew any of the participants in the proceeding. No one claimed such acquaintance until midway through the trial when juror Mr. Ricky notified Judge Froehlich that he was a friend of Alison Browne. Attorney Conheady declined to ask for dismissal once this was brought to the attention of the Judge. Judge Froehlich declined to dismiss this, or any other juror, to ensure an impartial jury.

9. Assistant District Attorney Brower headed his prosecution witness list with Executive Director, Byron Mallot, and Chief Financial Officer, Peter Bushre, of the Alaska Permanent Fund Corporation (APFC), employer of plaintiff Ms. Putman. This was done in order to influence jurors into thinking that this case was important

enough for them to come and testify against the petitioner. These are very well known and respected individuals who in fact did not testify because they had no direct knowledge of the case facts; except that Bushre had signed a letter written by Alison Browne to petitioner, and received a letter in return from petitioner to APFC.

10. Conheady did not file a motion to dismiss the case on grounds of a false charge, even though he felt it should not go to trial because the charge of "stalking" was inappropriate. Even though Conheady was aware that petitioner was never given his Miranda rights, he did not file a motion to dismiss the case. Conheady should have filed a motion to suppress evidence obtained illegally and used against the petitioner during the trial. Conheady told petitioner repeatedly that he did not want him to testify.

11. Prior to trial petitioner provided Conheady with names of potential witnesses that could speak to the facts regarding the actions of the plaintiff Ms. Putman towards the petitioner. Conheady neglected to follow up on petitioner's suggestions and did not include them on the witness list at the time of trial. He did so without informing the petitioner that he was not prepared with key defense witnesses. Witnesses included the plaintiff's ex-boyfriend, who could testify as to her character and flirtatious nature. Also, the mother of the ex-boy friend (the petitioner's landlord) who was acquainted with the plaintiff's character, and CBJ Police Officer Wilson who had expressed that he saw this situation as a mere misunderstanding. Petitioner also suggested to Conheady that he should obtain copies of video camera tapes from the Federal Protective Service taken by security cameras at the Federal Building. These would show that plaintiff was not in fear, since she frequently presented herself to the petitioner at his place of work. Petitioner suggested

that Conheady obtain records from the Alaska State Troopers to verify whether or not plaintiff was registered to have a gun in her possession, which she testified she slept with for protection. Petitioner also suggested that Conheady visit petitioner's office to view the office floor plans and observe for himself that petitioner couldn't possibly see directly into the plaintiff's office from the window which he was alleged to have been watching the plaintiff from. All of this evidence would have given the jurors enough information to see the truth and have reasonable doubt in the case to find the petitioner "not guilty" of the stalking charge. However, Conheady neglected to follow through with the petitioner's suggestions and he provided no evidence in defense of the petitioner during the trial.

12. Trial began July 20, 1998. During the trial several unusual circumstances occurred. For instance, after jurors were seated and during jury instruction, Conheady requested that Judge Froehlich give jury instruction in accordance with AS 11.81.620(b)(1), i.e., that whatever was done would have been done because of petitioner's belief, reasonably held, that his actions were not or would not be unwelcome by the plaintiff. Plaintiff's actions for several months made petitioner believe that she wanted and enjoyed his attention. Judge Froehlich refused Conheady's request to offer this jury instruction. The most unusual and consequential tactic used by Conheady was his failure to pursue serious cross examination of prosecution witnesses, namely the plaintiff and his long time friend Allison Browne, and conspicuously backed off from his questioning whenever Judge Froehlich cleared his throat, strongly suggesting that this was a prearranged signal between them. In his closing argument, Assistant District Attorney David Brower, mentioned "I'm going to tell you what I remember from Mr. Conheady's opening statement about eye contact.

My recollection was he said that Mr. Alhilawi had eye contact with Ms. Putman and I didn't hear that in the evidence..." At that point Mr. Conheady approached the bench and argued to the judge that the Assistant District Attorney's comment was inappropriate and moved for a mistrial because the evidence referred to by the Assistant District Attorney could only have been put in by petitioner. Judge Peter Froehlich denied the motion and offered to give a cautionary instruction. Mr. Conheady declined Judge Froehlich's offer and stated that a cautionary instruction would only draw further attention to the fact that petitioner did not testify. The Assistant District Attorney, having accomplished his purpose, continued with his rebuttal argument and made no further reference to the "eye contact" evidence. Petitioner argues that Judge Froehlich should have granted Mr. Conheady's motion for a mistrial. Mr. Conheady's decision to move for a mistrial had merit. Judge Froehlich recognized this fact or he would not have offered to give a cautionary instruction. If the Assistant District Attorney felt that his remark was appropriate, he would have continued his discussion on the eye contact in his closing argument. The Assistant District Attorney's decision to discontinue the discussion is indicative that petitioner's Fifth Amendment right was violated. Judge Froehlich's actions were contradictory. Why would Judge Froehlich deny Mr. Conheady's motion for mistrial and, in the same breath, offer to give a cautionary instruction? Judge Froehlich's decision regarding this matter was wrong and in violation of the petitioner's right not to testify.

13. Jurors found petitioner "guilty" of the "stalking" charge and trial ended on July 21, 1998 without Judge Froehlich advising him of his right to appeal the conviction. Petitioner was sentenced to serve 265 days in jail with 200 days suspended, was fined $2,500 with $2,000 suspended, and five years probation. Petitioner was

required to report to Lemon Creek Correctional Facility on July 28, 1998.

14. When the trial ended, petitioner asked Conheady if he could file and appeal and Conheady told him to come to his office later to discuss it. Conheady withdrew as counsel for petitioner and petitioner had to file an appeal of his conviction as Pro Se on July 27, 1998. Petitioner also filed a request and order for a "stay of sentence."

15. Petitioner was first incarcerated on July 28, 1998, with a firm release date of September 5, 1998 as shown on the release document sent to the prison. The petitioner's initial Security Designation Form for "Short-Term Sentenced Prisoners", as completed by Probation Officer Scott Fennimore on August 3, 1998, was given a score of one (1) point. A "minimum" security level is granted for scores of 1-7 points. The Prison Superintendent overrode the "minimum" security classification to "medium" security because the court unjustly and incorrectly expressed a view of community concern. Such an order could only have come from Judge Froehlich, who was unquestionably influenced by Assistant District Attorney Brower. This reclassification prevented petitioner from entering the halfway house, which would have allowed petitioner into the work release program. Felons are allowed to participate in the work release program but petitioner was unjustly denied even though his conviction was for a misdemeanor.

16. On August 11, 1998, Judge Larry Weeks granted petitioner a "stay of sentence pending appeal" and he was released from jail under conditions of release that was previously imposed with new conditions added. One of the conditions required petitioner to enroll in an Alternative to Violence program with Tongass Community Counseling Center (TCCC). Petitioner

contacted TCCC and attempted to enroll but because of he filed a request with the court to reconsider this condition since no violent actions were committed. On August 28, 1998, Tongass Community Counseling Center (TCCC) filed an affidavit with the court stating that petitioner was in non-compliance with conditions of release because he had not enrolled into their Alternative to Violence Program within 10 days from his release. In support of the affidavit, Assistant District Attorney Brower filed an "Ex Parte Application for Arrest Warrant" and requested that bail be set at $5,000.00. Petitioner believed that the bail amount was excessive and in violation of the Eighth Amendment of the Constitution, for an alleged non-compliance with one of the conditions of release on a misdemeanor charge. As a result of the arrest warrant issued by Judge Froehlich, petitioner was re-arrested on September 1, 1998, without first having an evidentiary hearing to determine whether or not petitioner was in fact non-compliant. This constituted another violation of his right to due process of law. Petitioner was not non-compliant as alleged, because he had in fact contacted TCCC on August 14, 1998 and talked with a counselor about enrollment into the program. The TCCC Counselor advised petitioner not to enroll until the court responded to the request. Petitioner was re-placed into custody to serve his required 65 days of incarceration, which with good time, amounted to 43 days. Petitioner's release date should have been on September 25, 1998. On September 23, 1999, petitioner asked the prison superintendent if they had his release document. He was told that no release document was provided to the prison superintendent, who stated that it was very unusual for them not to receive this document immediately upon incarceration. Petitioner called the court and asked why the release document specifying his actual date of release was not sent to the prison. The court declined to respond. Petitioner then

requested a hearing with the court to find out what was going on.

17. On September 24, 1998, petitioner appeared in court without counsel before Judge Froehlich to obtain a release document. Instead of issuing a release document, Judge Froehlich treated it as a bail hearing, and retained the same conditions (bail, third party custody, and conditions of release previously set by Judge Weeks). Petitioner questioned Judge Froehlich why he wanted to impose bail and the same conditions of release when petitioner was supposed to be released from jail on September 25, 1998, the following day, at which time he would have served his entire sentence. The judge merely responded "Don't argue with me." Petitioner was returned to jail with no answer to question of release date. Because Judge Froehlich imposed a third party custodian, petitioner tried to obtain release from jail under third party custody on four different occasions (September 2, before Magistrate Sivertsen, September 3, before Judge Froehlich, September 8, before Judge Carpeneti, and again before Magistrate Sivertsen on September 15, 1998). Petitioner had two friends willing to serve as third party custodians. Petitioner appeared in court before Judge Carpeneti with an Alaska Native friend, but Judge Carpeneti refused to accept this person as a third party custodian. The petitioner appeared in court a second time before Judge Sivertsen with another friend, an Engineer and co-worker of the petitioner. Magistrate Sivertsen's line of questioning and tone of voice was abusive and demeaning, and he threatened to throw this person in jail if petitioner violated his conditions of release. After a lengthy, unusual interrogation Judge Sivertsen refused to accept this person as a third party custodian.

18. September 29, 1999, petitioner asked for another hearing and was returned back to court to appear again before

Judge Froehlich, with Ms. Julia Moudy, Public Defender, appointed as his counsel. Again, rather than issue a release document for the petitioner, Judge Froehlich reduced the bail amount to $500.00 and again re-imposed the same conditions of release. Ms. Moudy argued with Judge Froehlich that the imposed bail and conditions of release placed the petitioner in a "catch 22" situation. She mentioned that, petitioner was being forced to choose between his appeal and being on bail and condition of release or abandon his appeal and be released with no bail or conditions of release. Ms. Moudy also argued that the way Judge Froehlich was handling this case was "unusual" and to keep petitioner in jail such a long time amounted to "cruel and unusual punishment." Reluctantly, the petitioner paid the $500.00 bail and was released from prison under conditions of release, which were both unlawfully and unjustifiably imposed. In addition to posting bail and being placed under conditions of release, petitioner had been forced to serve an additional four (4) days imprisonment beyond the computed 43 days that should have been served (65 days less good time) with no explanation as to why he was so punished. At this point, petitioner should have been placed on probation because he completed his entire unsuspended sentence.

19. After his release from incarceration, petitioner submitted several motions to the court to vacate the unjustly imposed conditions of release and to get a refund of the $500.00 bail. Superior Court Judge Larry Weeks denied petitioner's motions on November 25, 1998 and December 11, 1998. It took petitioner several tries and nine months to have the illegal conditions of release finally vacated. The conditions of release were improperly imposed upon petitioner by Judge Froehlich, subsequently upheld by Magistrate Sivertsen and Judge Weeks, after petitioner had served his entire sentence,

simply because petitioner exercised his right to file an appeal of his conviction. After extended proceedings and failure with the lower courts, petitioner finally submitted a petition for hearing to the Court of Appeals to vacate the conditions (see Appendix G). The Court of Appeals correspondence to the Superior Court prompted Judge Weeks to finally vacate the conditions of release and return the bail (see Appendix F). Petitioner and public defenders could not get the Judges in the District Court and the Superior Court to accept the fact that they were unlawfully and unjustly imposing conditions of release and bail after petitioner had served his required sentence. The Assistant District Attorney opposed the petition to vacate the conditions of release and said that "the conditions of release were imposed upon the petitioner, after he served his period of incarceration, because if he was successful in his appeal, the court MAY order that a new trial be conducted. Because there was potential for a new trial, the State has to impose conditions of release pending trial." The Assistant District Attorney further stated that "the petitioner, by appealing his conviction, placed himself in a position analogous to a pretrial situation." The Assistant District Attorney's unlawful argument reflects that the petitioner was irrationally being subjected to cruelty, inhuman and unusual punishment because he exercised his right to appeal.

20. Petitioner filed his Memorandum in Support of Points on Appeal of his conviction from the District Court to the Superior Court for the State of Alaska First Judicial District at Juneau, Case No. 1JU-S98-641 CR on December 10, 1998. (see Appendix E)

21. Superior Court of the State of Alaska First Judicial District at Juneau affirmed the District Court judgement on June 23, 1999, Court No. 1JU-S98-641 CR. (see Appendix D)

22. Petitioner filed a Petition for Hearing on July 8, 1999 with the Court of Appeals of the State of Alaska, Case No. A-07415. Court of Appeals denied Petition for Hearing on August 13, 1999. (see Appendix B)

23. Petitioner filed a Petition for Hearing to the Supreme Court of the State of Alaska on August 27, 1999, No. A-09305, to review the August 13, 1999 decision of the Court of appeals. (see Appendix C)

24. Petitioner's Petition for Hearing to the Supreme Court of the State of Alaska, No. S-09305, was denied on November 1, 1999. (see Appendix A)

REASONS FOR GRANTING THE PETITION

I. THE ALASKA SUPREME COURT HAS DECLINED TO ACT ON A CASE INVOLVING MULTIPLE CIVIL RIGHTS VIOLATIONS AND UNJUST ACTS PERPETRATED BY THE STATE OF ALASKA DEPARTMENT OF LAW AND COURT SYSTEM.

VIOLATIONS OF FEDERALLY PROTECTED RIGHTS

1) Fifth Amendment of the Constitution

(A) Petitioner was arrested and was not advised of his Miranda Rights then, or subsequently, as is required under "Miranda." Petitioner was thus not advised of his right to obtain counsel and on the day of his arrest petitiöner went to court for arraignment without counsel. Petitioner had a right to counsel. Miranda v. Arizona, 384 U.S. 436, 444, 478-79(1966).

(B) Petitioner is protected from self-incrimination. The petitioner chose to exercise his right not to testify during the

trial. This was a decision based on three months of direction from trial attorney Conheady, naive trust in the system, and petitioner's apprehension over the foreign, hostile, intimidating environment of the courtroom. Yet, in his closing argument the Assistant District Attorney stated "...My recollection was he said that Mr. Alhilawi had eye contact with Ms. Putman and I didn't hear that in the evidence..." This was a clear reference to the fact that the petitioner had not testified in his own behalf. Judge Froehlich failed to advise the Assistant District Attorney that his comment, which is forbidden by statute, would create or tend to create a presumption against petitioner for not testifying. In Wilson v. United States (1893) 149 US 60,372 Ed 650, 13 S CT 614, the Supreme Court found that the Wilson holding expressed the "spirit" of the privilege against self-incrimination, and the comments of the prosecutor in the present case were therefore in violation of the Fifth Amendment. Judge Froehlich violated petitioner's right under the Fifth Amendment, and abused his discretion by not granting a mistrial where the denial of a mistrial motion is found to have been "clearly erroneous". See McBeth v. State, 652 P.2d.120 (Alaska App. 1982) and also Griffin v. California (1965)380 US 610-11,14L ED 2nd 106,85 S CT 1229

(C) Petitioner was deprived of his liberty by having his prison security clearance arbitrarily changed from "low" to "medium". On a minimum security scale of 1 - 7, petitioner was given a level "1" classification, which would have allowed him to be transferred to the halfway house to complete his sentence and participate in the Work-Release program. However, on July 30, 1998, one day before the petitioner was to be transferred to the halfway house, the petitioner was reclassified to "medium security." The change in petitioner's status without due process prevented him from being transferred to the halfway house to complete his sentence and earn his salary. With the reclassification, petitioner was confined at the Lemon Creek Correctional

Center. A Judge, or perhaps the Assistant District Attorney, ordered the reclassification without just cause.

Nothing in the petitioner's life history or in the case record justified this action. Petitioner is not, and has not been, guilty of any act that gives cause to consider him a concern to the community. No basis exists for the reclassification of security level and the resultant loss of liberty to earn his livelihood.

(D) Petitioner was deprived of his liberty by having his third party custodian candidates unreasonably denied. The judges' actions were disrespectful towards these individuals who are upstanding, college educated professional members of this community. The judges' prejudicial behavior and tactics in their line of questioning was done because these individuals both represent minorities. These Judges abused their power, acted with prejudice and demonstrated that they were in concert with Judge Froehlich to prevent petitioner from being released from jail.

(E) Petitioner argues that Judge Froehlich deliberately failed to uphold the Alaska Rules of Court, Criminal Rule 32.5(a) and 32.5(b) when he did not advise petitioner of his right to appeal. On appeal to the Superior Court, Judge Weeks abused his discretion and misused his power, under color of law, when his actions disregarded this matter and he chose not to protect petitioner's constitutional right to due process of law

2) <u>Fifth & Eighth Amendments of the Constitution</u>

(A) For an alleged violation of one condition of release, the petitioner was arrested and taken to jail without due process of an evidentiary hearing. Judge order bail at $5,000, which was excessive for the alleged violation. Petitioner served the remainder of his unsuspended sentence because he could not make bail. Judge violated petitioner's right to due process and imposed excessive bail without just cause.

(B) Petitioner was incarcerated four (4) days beyond the specified release date because Judge Froehlich declined to

provide release document to Lemon Creek Correctional Center. This action constituted deprivation of liberty and cruel and unusual punishment without due process.

(C) Judge Froehlich violated Res Judicata, "the thing has been decided"; i.e. a sentence was handed down and served, yet after petitioner served his required sentence, conditions of release and bail were re-imposed on him by Judge Froehlich. This violation was appealed and denied by Judge Froehlich, then by Judge Carpenetti, by Judge Weeks (the judge who had originally imposed the same conditions of release, though in an earlier, different circumstance, and was at the time reviewing petitioner's appeal of his conviction), and Magistrate Sivertson. These judicial actions evidenced bias and illegally deprived petitioner of liberty, and constituted cruel and unusual punishment. While the State Court of Appeals ordered these conditions vacated after nine months, the petitioner had suffered loss of freedom and mental anguish for that period. Furman v. Georgia, 408 U.S. 238 (1972). (see Appendix G and F).

3) <u>Violation of Fourteenth Amendment Due Process</u>

(A) Petitioner should have been given a copy of the arrest warrant immediately upon arrest, or must be informed of the offense charged, and given an opportunity to see the warrant as soon as practicable. Fed. R. Crim. P. 4(d)(3). An arrest warrant was issued on April 13, 1998, and was fully executed by Officer Comolli of the Juneau Police Department on April 14, 1998. Petitioner was not given a copy of the arrest warrant by Officer Comolli immediately upon arrest, nor was petitioner given an opportunity to see the warrant as soon as practicable. The fact is, petitioner was never given a copy of the arrest warrant.

(B) The Assistant District Attorney, Judge and Defense Attorney neglected to assure selection of a fair and impartial jury of the petitioner's peers. Selected jurors were acquainted with key prosecution participants, and employed by the State, as was the plaintiff. Hernandez v. Texas (1954)347 US 475,

98L ED 866,74 S CT 667.

4) Conspiracy by State Officials and Other Participants Therefore Acting Under Color of Law

The multitude of violations infringing on the petitioner's rights, perpetrated by knowledgeable, experienced lawyers and judges, and uncontested by petitioner's reputedly competent defense counsel, cannot be accounted for by any explanation except conspiracy. What aspect of the first offense charge for the misdemeanor crime of stalking warranted such treatment? Certainly it was not simply a matter of petitioner having sent flowers and inoffensive e-mail messages to an individual who actually invited the attention.

One must look beyond the prima fascia case, into the surrounding players. Tobie Putman, plaintiff against the petitioner, works for the Alaska Permanent Fund Corporation, APFC. Her supervisor, Alison Browne, Director of Administration for the APFC, wrote a letter to the petitioner, signed by Peter Bushre, Chief Financial Officer of the APFC without first reading it. Petitioner responded with a letter mirroring the tone and character of Ms. Browne's letter. This letter was copied to many powerful officials, thus causing embarrassment to the APFC. Ms. Browne ceased working there very soon thereafter. Petitioner was charged with stalking shortly afterward. Byron Mallott, Executive Director of the APFC, and Bushre, headed the witness list compiled by the Assistant District Attorney. Evidently their names were used to impress the jurors, because of their stature in the community; but, they knew nothing of the case and were not called to testify.

Rights violations multiplied when petitioner declined to accept a plea bargain to communication harassment; and again when he inquired of his attorney about whether he could sue for false charges; and again when he informed his attorney that he intended to appeal his conviction.

Petitioner wants to make clear that a flirtatious young

lady baited him into a relationship and turned spiteful when she found out he was married. With guidance from the Assistant District Attorney's Office, she created a scenario fitting the stalking requirement for fear. Nothing the petitioner did warranted fear on her part, and she imagined, fabricated, and perjured herself to meet the Assistant District Attorney's case requirements for a conviction.

Petitioner is innocent of the stalking charge that was constructed against him. He was convicted only through abuse of power, conspiracy, and overlooking of rights violations.

The above cited human rights violations by the State of Alaska Department of Law and Court System, aided and abetted by a private practice attorney, who evidently had a higher allegiance to the State Officials than to his client, are egregious. Not just because of their impact on the petitioner, but because they evidence a morally bankrupt, conscienceless system, which must surely be causing pain and hardship to many, in particular Alaska's minorities who predominate in the jails. Actually, such infringements of people's rights have been an issue in the local (Juneau, Alaska) media for several years. All too often, those, whose rights are violated, lack the means or the will to fight a battle of attrition against the entrenched, mutually supportive, Department of Law and judiciary. It is ludicrous to call this a justice system. How can one be protected from such knowing and willful abuse of the legal system and personal power, when the perpetrators of such acts have been granted immunity from prosecution? The State of Alaska is conspicuously lacking a justice system. Nothing will change until their vile acts are made known and it is demonstrated that ultimate power and justice reside in the U.S. Constitution, as implemented by the U.S. Supreme Court. Only the humiliation of exposure and reversal of this case will cause the State of Alaska to recognize and correct the abusive ways of its Department of Law and Court System and conscientiously protect the rights of its citizens.

CONCLUSION

For the reasons discussed above, the petitioner respectfully requests that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

Adnan Alhilawi
Pro Se
P.O. Box 22437
Juneau, Alaska 99802
(907) 463-4997

January 28, 2000

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF ALASKA

Argued 8/27/99 Denied 11/1/99

No. S-09305

Adnan Alhilawi,

Petitioner

v.

State of Alaska,

Respondent

Trial Court Case # **1JU-98-00641 CR**
Court of Appeals # **A-7415**

Before: Matthews, Chief Justice, Eastaugh, Fabe, and Bryner, Justices (Carpeneti, Justice, not participating).

On consideration of the Petition for Hearing filed on 8/27/99, and the Response to the petition, filed on 9/13/99,

IT IS ORDERED:

The Petition for Hearing is **DENIED.**
Entered by the direction of the court.

Clerk of the Appellate Courts
S/Marilyn May

cc: Supreme Court Justices
Court of Appeals Judges
Trial Court Judge Weeks
Trail Court Appeals Clerk/Jun

Distribution:

David L. Brower
Asst. District Attorney
P.O. Box 110300
Juneau, AK 99811

Adnan Alhilawi
P.O. Box 22437
Juneau, AK 99802

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

Argued 7/8/99 Denied 8/13/99

No. A-07415

Adnan Alhilawi,

Petitioner

v.

State of Alaska,

Respondent

Trial Court Case # **1JU-98-00641 CR**

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

On consideration of the Petition for Hearing filed on 7/8/99, and the Response filed on 8/5/99,

IT IS ORDERED:

The Petition for Hearing is **DENIED.**
Entered by the direction of the court.

Clerk of the Appellate Courts
S/ Deputy Clerk

cc: Court of Appeals Judges
Trial Court Judge Weeks
Trail Court Appeals Clerk/Juneau

Distribution:

David L. Brower
Asst. District Attorney
P.O. Box 110300
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APPENDIX C

IN THE SUPREME COURT OF THE STATE OF ALASKA

[Filed August 27, 1999]

No. S-09305

Adnan Alhilawi,

Petitioner

v.

State of Alaska,

Respondent

Trial Court Case #1JU-S98-00641 CR
Court of Appeals #A-07415

PETITION FOR HEARING TO REVIEW THE 8/13/99 DECISION OF THE COURT OF APPEALS

INTRODUCTION

This case involves an appeal from a conviction in the district court for the offense of Stalking in the Second Degree, AS 11.41.270(a). The petitioner was convicted in District Court and was sentenced to 265 days with 200 days suspended and placed on five (5) years probation. From this sentence, the petitioner has appealed to the Superior Court, the Court of Appeals, and now to the Supreme Court.

Now comes, Adnan Alhilawi, before the Supreme Court to submit a petition for hearing in accordance with Rule 302 (a)(1) and requests the Supreme court to exercise its

discretionary jurisdiction provided under AS 22.07.030 to review the final decision of the court of appeals, dated 8/13/99, to deny petitioner's request for hearing dated 7/8/99.

According to Rule 303(a)(1), petitioner must file a petition for hearing within 15 days after the date of notice, order or memorandum. Date of notice is further defined in Criminal Rule 32.3(c) (2) as the date shown in the clerk's certificate of distribution on the written order. Rule 32.3(d) further explains that every written notice of an order shall include a clerk's certificate of distribution showing the date copies of the order were distributed, to whom they were distributed, etc. The recent order issued by the Court of Appeals on 8/13/99 was absent a clerk's certificate of distribution as required by Rule 32.3(c)(2) and 32.3(d). Since the court order does not show the date in which copies of the order were distributed, the petitioner is unsure as to when his 15-day time frame began. Therefore, the petitioner shall count his 15-day timeframe from the 8/13/99 date of the order. Petitioner also brings attention to the Supreme Court the error of the Court of Appeals to include a clerk's certification of distribution on the court of appeals order, which denied petitioner's request for hearing.

STATEMENT OF THE POINTS

1) **Miranda - Fifth Amendment of the Constitution**

No person shall be deprived of life, liberty, or property, without due process of law. Upon arrest police officers must inform the accused that he has a right to remain silent, that any statements he makes can be used against him at a criminal trial, that he has a right to counsel and that if he cannot afford counsel one would be appointed. Petitioner was arrested and was not given his Miranda "upon arrest" as is required. Without being given a Miranda petitioner was not advised of his right to obtain counsel. On the day of his arrest, petitioner went to court without counsel. Petitioner has a right to counsel. Miranda v. Arizona, 384 U.S. 436,

444, 478-79(1966).

Federal law requires that the petitioner must be given a copy, immediately upon arrest, of the arrest warrant, or must be informed of the offense charged and given an opportunity to see the warrant as soon as practicable. Fed. R. Crim. P. 4(d)(3). An arrest warrant was issued on April 13, 1998 and was fully executed by Officer Comolli of the Juneau Police Department on April 14, 1998. Petitioner was not given a copy of the arrest warrant by Officer Comolli immediately upon arrest nor was petitioner given an opportunity to see the warrant as soon as practicable. The fact is, petitioner was never given a copy of the arrest warrant.

Under the U.S. Constitution and Alaska Constitution no person should be deprived of Miranda Rights. Petitioner was deprived of his Miranda. Officials are hired to enforce laws not to deprive the citizens of the due process of laws, which were written to protect citizen's rights. This practice, if not challenged, will become common practice among officials hired to carry out the laws and many other citizens of this State will be deprived of their rights to due process of the laws. Petitioner challenges the actions of the officials in this case to ensure that other citizens of this state are not deprived of their right to due process of law.

2) **Petitioner's right not to testify - Fifth Amendment of the Constitution - Self- incrimination.**

The petitioner chose to exercise his right under the Fifth Amendment not testify during the trial. However, District Attorney, David Brower mentioned in his closing argument "I'm going to tell you what I remember from Mr. Conheady's opening statement about eye contact. My recollection was he said that Mr. Alhilawi had eye contact with Ms. Putman and I didn't hear that in the evidence....." At that point Mr. Conheady approached the bench and argued to the judge that the District Attorney's comment was inappropriate and moved for a mistrial. Mr. Conheady argued that the evidence the District Attorney referred to, could only have been put in

by me. Judge Peter Froehlich denied the motion and offered to give a cautionary instruction. Mr. Conheady declined Judge Froehlich's offer and stated that a cautionary instruction would only draw attention to the fact that I did not testify. The District Attorney continued with his rebuttal argument and made no further reference to the "eye contact" evidence.

Petitioner argues that Judge Froehlich should have granted Mr. Conheady's motion for a mistrial. As an experienced attorney, Mr. Conheady's decision to move for a mistrial was not without merit. Judge Froehlich recognized this fact or he would not have offered to give a cautionary instruction. Judge Froehlich denied Mr. Conheady's motion for a mistrial and because Mr. Conheady did not want more attention called to the District Attorney's inappropriate comment he declined cautionary instruction. The District Attorney knew his comment was inappropriate because he made no further reference to the eye contact. If the District Attorney felt that his remark was appropriate, he would have continued his discussion on the eye contact in his closing argument. The District Attorney's decision to discontinue the discussion is indicative that my Fifth Amendment right was being violated. Judge Froehlich failed to advise the District Attorney that he is forbidden by the statute to make any comment, which would create or tend to create a presumption against petitioner from failure to testify. In Wilson v. United States (1893) 149 US 60,372 Ed 650, 13 S CT 614, the Supreme court found that the Wilson holding expressed the "spirit" of the privilege against self-incrimination, and the comments of the trial court and prosecutor in the present case were therefore in violation of the Fifth Amendment. Judge Froehlich violated my right to use the Fifth Amendment and abused his discretion by not granting a mistrial, where the denial of a mistrial motion is found to have been "clearly erroneous". *See* McBeth v. State, 652 P.2d.120 (Alaska App. 1982).

Petitioner also feels that the judge's action were

contradictory. Why would Judge Froehlich deny Mr. Conheady's motion for mistrial and, in the same breath, offer to give a cautionary instruction? Petitioner possesses enough common sense to detect that Judge Froehlich's decision regarding this matter was wrong and in violation of the petitioner's right not to testify. The Fifth Amendment protects the right of all citizens who choose not to incriminate themselves through testifying at their own trial. If prosecution is allowed to bring attention to the fact that a defendant failed to testify, his practice violates the defendant's right under the Fifth Amendment. Any violation of the constitution must be prevented and the rights of the citizens should be protected. Otherwise this type of behavior and practice will continue and we will have an unjust court system. Citizen's rights will not be protected. Citizens will lose faith in a system that was designed and created to protect them. Eventually citizens will not trust a system that chooses to violate he constitution and judges that abuse their power.

3) **Petitioner's Freedom from Cruel and Unusual Punishment - Eighth Amendment of the Constitution**

Judge Peter Froehlich inflicted cruel and unusual punishment on September 29, 1998. When petitioner completed his 65 days of incarceration, which with good time amounted to 43 days, petitioner was not released from prison. Petitioner called the court and asked why the release document was not sent to the prison specifying his actual date of release. The court did not send the release document to the prison and the Prison Superintendent said that it was very unusual for the prison not to receive this document upon immediate incarceration. The prison got the document when petitioner was first incarcerated in July, 1998. But when petitioner was re-arrested on September 1, 1998 the prison did not get it at all. On September 23, 1999, petitioner requested a hearing to find out what was going on. Petitioner appeared before Judge Froehlich on September 24, 1998 and bail was set at $750.00. Petitioner did not have this amount

of money and was brought back to jail. On September 29, 1999, petitioner attended another bail hearing and Judge Froehlich reduced the bail amount to $500.00. Petitioner was released from prison upon payment of $500 bail and conditions of release. Petitioner was incarcerated for 4 days beyond the computed 43 days that should have been served less good time. Petitioner considers this cruel and unusual punishment. Petitioner was never given an explanation as to why he had to serve 4 additional days beyond the initial determination that he had to serve 43 days less good time.

Petitioner submitted several motions to the court to vacate the conditions of release. Superior Court Judge Larry Weeks denied petitioner's motions on November 25 and December 11, 1998. It took petitioner several tries and nearly one year to get the conditions of release vacated. The conditions of release were improperly imposed upon petitioner by Judge Froehlich, Magistrate Sivertson, and Judge Weeks after petitioner had already served his entire sentence and simply because he had exercised his right to file an appeal of the conviction. Petitioner finally submitted a petition for hearing to the Court of Appeals to vacate the conditions. The Court of Appeals correspondence to the Superior Court prompted Judge Weeks to finally vacate the conditions of release and return the bail. Petitioner couldn't get the District Court Judges nor the Superior Court Judges to realize that they were wrongfully imposing the conditions of release and imposing bail. Petitioner has not conducted himself in a manner before the court that would give them reason to impose conditions of release after serving his required period of incarceration. Petitioner has conducted himself with dignity and professionalism at all times before the court. District Court Judge Peter Froehlich and Superior Court Judge Larry Weeks abused their power and violated petitioner's constitutional right when they imposed conditions of release upon him after he served his entire unsuspended sentence of incarceration. This was done to the petitioner because he chose to exercise his right to appeal his

conviction. Julia Moudy of the Public Defender's office, who was assigned to defend petitioner on September 29, 1998, stated before the court that the petitioner was being forced to either choose between his appeal and be on bail or abandon his appeal and get released with no conditions of release. She also stated in court that this action amounted to cruel and unusual punishment. She mentioned that this case was handled in an unusual way. She told the court that she had never seen a situation like this where a person's been kept in jail for such a long time for such a minor issue.

Petitioner was prevented from participating in the Work-Release program. One day before the petitioner was to be transferred to the halfway house on July 30, 1998, the petitioner was classified as "minimum custody/security" and for some reason this classification was intentionally changed to "medium custody." The change in petitioner's status prevented him from being transferred to the halfway house. Instead petitioner was held at the Lemon Creek Correctional facility. This prevented petitioner from having the ability to earn his salary and complete his sentence at the halfway house.

District Attorney Brower, in his response to the petition for hearing, said that the conditions of release were imposed upon the petitioner after he served his period of incarceration because if he was successful in his appeal, the court MAY order that a new trial be conducted. Because there was potential for a new trial, the State has to impose conditions of release pending trial. The District Attorney further stated that the petitioner, by appealing his conviction, placed himself in a position analogous to a pretrial situation. Petitioner is not a scholar of law, but the District Attorney's argument reflects that the petitioner is being subjected to cruel and unusual punishment because he exercised his right to appeal.

On September 29, 1999, Judge Peter Froehlich made a false allegation that the petitioner is a "dangerous person" and posed a danger to the community. Petitioner never exhibited any violence during the trial, in fact, he did not

testify. Judge Froehlich never heard the petitioner speak during the trial. Judge Froehlich's false allegation about the petitioner being dangerous to the community only began after petitioner contacted the clerk of the court on September 23, 1998 and requested that the release document be sent to the jail. The clerk refused and then petitioner asked if he could speak to the Judge and she told him that he couldn't. Petitioner mentioned to the clerk that apparently Judge Froehlich was taking this case personally and that if this was the case petitioner was going to contact the media and report the Judge's action against him. Petitioner asked the clerk to pass his statement on to Judge Froehlich. A few minutes later petitioner received a fax at the jail to appear in front of Judge Froehlich on September 24, 1998. At this hearing Judge Froehlich reduced the bail amount to $750.00. Petitioner did not have the money to post bail so he was returned to jail. Petitioner went to court again on September 29, 1998 and requested that he be released from jail because he completed his required period of incarceration four days ago. At this hearing, Judge Froehlich falsely alleged that petitioner was a "dangerous person" and that bail was required before he could be released. Petitioner did not understand why was he was required to post bail again before he could be released when he served his entire sentence. Judge Froehlich abused his power and his actions against the petitioner were cruel and unusual punishment.

The cruel and unusual punishment imposed upon the petitioner by the State officials are in complete violation of the petitioner's right to protection and freedom of cruel and unusual punishment by the Eighth Amendment of the U.S. Constitution. Cruel and unusual punishments include uncivilized and inhumane punishments, punishments that fail to comport with human dignity, and punishments that include physical and emotional suffering. Furman v. Georgia, 408 U.S. 238 (1972). Petitioner argues that the behavior and actions of State officials in the court system diminish the rights of citizens. Citizens depend on the state officials to

practice and abide the laws so that justice is served equally. Petitioner asks the Supreme court to review the action and behavior of these state officials and issue a favorable finding so that other citizens of this state are prevented from being subjected to cruel and unusual punishment by these officials.

4) **Petitioner's Right to Appeal - Fifth Amendment Right to Due Process**

Petitioner argues that Judge Froehlich intentionally failed to uphold the Alaska Rules of Court, Criminal Rule 32.5(a) and 32.5(b) when he did not advise petitioner of his right to appeal. Judge Froehlich failed to abide by the rules and violated petitioner's right to due process of law. Judge Froehlich did not want petitioner to appeal the conviction. On appeal to the Superior Court, Judge Weeks abused his discretion and misused his power, under color of law, when his actions disregarded this matter and chose not to protect petitioner's constitutional right for due process of law. Petitioner wonders how many other citizens were not advised of their right to appeal their convictions. It seems that this type of practice has become common practice by state officials. Petitioner refuses to believe that these court officials forgot how to abide by the rules especially when these court officials are experienced and knowledgeable of the laws and rules of the court. How many other citizens have suffered because they were not advised of their right to appeal? How many citizens will suffer in the future because these court officials arbitrarily decide who is kept informed of their rights? Every citizen must be treated equally and must be protected from officials that abuse their power.

5) **Conspiracy by State Officials Acting Under Color of Law**

Petitioner has suffered emotionally and physically from the wrongful and unlawful actions imposed by State officials. These court officials violated the petitioner's constitutional rights to due process, freedom of cruel and unusual

punishment, and deprivation of civil rights simply because petitioner exercised his right to appeal the conviction. The state officials conspired against the petitioner when they deprived the petitioner of his right to equal protection under the law. Petitioner was convicted of a misdemeanor, yet he is being treated as though he was convicted of a felony charge. Petitioner believes he was convicted of the stalking charge because he refused to accept a plea bargain. Petitioner felt strongly that he would not be convicted of the stalking charge because of the advice he received from his trial attorney.

Is not justice the goal of our legal system in Alaska? Did the framers of the United States constitution and the Alaska Constitution anticipate otherwise? Does this court believe we have a mere code of laws, circumscribed by precedent and implemented arbitrarily by judges and lawyers through application of esoteric procedural rules, with any other purpose? Of course not, the intent is to provide justice and equity to all, with each case evaluated on its facts and relevant laws. Citing of a few possibly relevant cases without reference to comparable fact or applicable laws is interesting but not a basis for denial. Precedent is but a convenient, expedient way to mechanize the legal profession. At best if offers guidance, at worst it fosters abuse and manipulation of the system. Surely many bad precedents must stand just because the defendant lacked the will and the means to appeal. Certainly justice is the goal, and this case must be judged on its merits.

Knowing and willful abuse of the law through prejudicial and conspiratorial behavior while acting on behalf of the State of Alaska under color of law, is what the petitioner believes is the case. The court system has abused the petitioner's rights and surely those of many other citizens of this state who have come before them. The court officials are not established as a power elite, authorized to subjugate minorities and suppress the masses. They have taken a solemn oath to uphold the law to the best of their ability, and they have abused that trust. State officials are obligated to

adhere to the requirements of the U.S. Constitution and the Alaska Constitution.

WHEREFORE, the petitioner prays that the Supreme Court accepts his petition for hearing and if the court's decision is favorable to the petitioner, then the petitioner prays for the following relief:

A. Reversal of the judgements of the lower courts.
B. An injunction preventing District Court Judge Peter Froehlich, Superior Court Judge Larry Weeks, and District Attorney David Brower from practicing law.
C. Expunge all records relevant to this case at all offending record locations.
D. That the court award petitioner monetary relief as the court deems just and proper.

DATED at Juneau, Alaska this 27th day of August, 1999.

/s/Adnan Alhilawi, Pro Se
P.O. Box 22437
Juneau, Alaska 99802

CERTIFICATE OF SERVICE:

I certify that on the 27th day of July, 1999, I served a true and correct copy of the foregoing upon David Brower, District Attorney via court box at the Dimond Courthouse, and the Court of Appeals via court clerk at the Dimond Courthouse.

/s/ Adnan Alhilawi, Pro Se

APPENDIX D

IN THE SUPERIOR COURT OF THE STATE OF ALASKA FIRST JUDICIAL DISTRICT AT JUNEAU

Argued December 10, 1998 Decided June 23, 1999

No. 1JU-S98-641 CR

Adnan Alhilawi,

Appellant

v.

State of Alaska,

Appellee.

MEMORANDUM OF DECISION

I. INTRODUCTION

This case involves an appeal from a conviction in the district court for the offense of Stalking in the Second Degree, AS 11.41.270(a)[1]. Following a jury trial, the district court sentenced Adnan Al-Hilawi ("Al-Hilawi") to 265 days imprisonment with 200 days suspended, a $3000 fine with $2500 suspended, and five years of probation. Al-Hilawi appealed the conviction on numerous grounds. For the following reasons, the court AFFIRMS the decision of the district court.

II. DISCUSSION

[1] AS 11.41.270(a) provides that "a person commits the crime of stalking in the second degree if the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member."

A. Prosecutor's Comment on Al-Hilawi's Failure to Testify

Al-Hilawi argues the following statements made by the prosecutor constituted an impermissible reference to his failure to testify at trial:

> I'm going to tell you what I remember about Mr. Coneady's opening statement about eye contact. My recollection was that he said Mr. Al-Hilawi had eye contact with Ms. Putman and I didn't hear that in the evidence.

The State argues its sole purpose for the statements was to point out the absence of evidence to support an important factual allegation asserted by defense counsel during opening statement.[2] The prosecutor prefaced his comments with reference to the jury instruction that comments of counsel were not evidence. Also, there existed another potential defense witness who could have testified on the matter.

The court finds nothing improper with the prosecutor's statements. The prosecutor's comments did not necessarily draw attention to Al-Hilawi's failure to testify. There is nothing improper in pointing out the failure of evidence to support the defendant's version of events.[3]

B. Mistake of Fact Jury Instruction

Al-Hilawi requested the judge give a mistake of fact jury instruction in accordance with AS 11.81.620(b)(1).[4] He

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[2] Defense counsel alleged in opening statement that the victim and Al-Hilawi made eye contact at a local bar. The argument flowing from this factual assertion was that despite the victim's knowledge of Al-Hilawi's presence nearby (a few stools down), she remained and spoke with a friend; therefore, she could not have been in fear Al-Hilawi.

[3] Simpson v. State, 796 P.2d 840, 842-43 (Alaska App. 1990).

[4] AS 11.81.620(b)(1) provides that "A person is not relieved of criminal liability for conduct because the person engages in the conduct under a mistaken belief of

argued that his mistaken belief that the victim welcomed his attentions negated the requisite "reckless" mental state.[5]

The State argues, as in initial matter, that this issue may not have been preserved for appeal. The record indicates defense counsel proposed the instruction; the state objected on grounds of confusion; and the judge declined to give the instruction. The court finds this issue has been properly preserved for appeal.

As to the merits, the trial judge has a duty to instruct the jury on the essential elements of an offense. Sears v. State, 713 P.2d 1218, 1219 (Alaska App. 1986). However, whether a particular instruction is to be given is within the judge's discretion. Id. There has been no assertion that the trial judge failed to instruct on the essential elements of the crime.

The crime of Stalking in the Second Degree has two mental elements: "knowingly" and "recklessly." An accused must "knowingly" engage in a course of conduct that "recklessly" places another in fear of death or physical injury. The trial judge instructed the jury on the crime of Stalking in the Second Degree, as well as the statutory definitions of knowingly and recklessly.

This court finds that the instruction on mistake of fact would have been provided a correct statement of the law. However, the trial judge did not err in refusing to give that instruction since the instructions he did give also correctly stated the law.

C. Ineffective Assistance of Counsel

The court of appeals has held that claims for ineffective assistance of counsel will not be entertained on appeal unless the defendant has first moved for a new trial or sought post-conviction relief. Barry v. State, 675 P.3d 1292, 1295-96

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fact, unless . . . the factual mistake is a reasonable one that negates the culpable mental state required for the commission of the offense."

[5] Stalking in the Second Degree requires that Al-Hilawi "recklessly" placed the victim in fear of death or physical injury. AS 11.41.270(a).

(Alaska App. 1984). Hence this court will not consider any claims alleging ineffective assistance of counsel (including but not limited to claims involving investigation, suppression of evidence, or witness examination).

D. Miranda

Al-Hilawi argues that since he was never given a Miranda warning, all evidence obtained and used against him was improper. As the State correctly notes, Al-Hilawi has not adequately briefed the issue; therefore it is waived. Garcia v. State, 947 P.2d 1363, 1364 n.1 (Alaska App. 1997).

Additionally, since the issue was never raised below, an adequate record for the factual basis behind any Miranda claim was not developed. Any potential claims under this theory would fall under an ineffective assistance of counsel claim, which as earlier state, are not appropriate when raised for the first time on appeal.

E. District Court's Failure to Advise Al-Hilawi of Rights to Appeal

This issue is moot. The court has accepted Al-Hilawi's appeal and the issue of public counsel has been exhaustively litigated.

F. Fear of Death or Physical Injury

Al-Hilawi contends that since there was no physical evidence introduced, the State failed to prove that the victim was placed in fear of death or physical injury. Alternatively, he attacks the credibility of the victim's testimony in an attempt to show lack of fear.

Evidence Rule 402 provides that all relevant evidence is admissible. Evidence Rule 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action

more probable or less probable than it would be without the evidence." The victim's testimony provides admissible evidence on the issue of her fear. She testified extensively as to her fear and the circumstances leading to her fear. This court finds no reason to disturb the factual findings reached by the jury. Al-Hilawi's arguments on this issue are meritless.

III. CONCLUSION

For the foregoing reasons, the court AFFIRMS the decision of the district court.

Dated at Juneau, Alaska, this 23rd day of June, 1999.

s/ Larry Weeks
Superior Court Judge

Certification

I certify that on the 24th day of June, 1999, I served the above order as follows:

David Brower - DAO ct box
Adnan Al-hilawi - mail

s/ Tracy Ver Velde
Secretary to Judge Weeks

APPENDIX E

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

[Filed December 10, 1998]

No. 1JU-S98-641 CR

ADNAN AL-HILAWI,
Appellant
v.
STATE OF ALASKA
Appellee

MEMORANDUM IN SUPPORT OF POINTS ON APPEAL

NOW COMES Appellant, Adnan Al-hilawi for his memorandum in support of points on appeal in the above captioned matter, and states:

STATEMENT OF THE CASE
FACTS AND PROCEDURAL BACKGROUND

On April 14, 1998, I was charged with Stalking in the 2nd Degree, AS 11.41. 270(a), arrested by the Juneau Police Department and was booked and incarcerated at Lemon Creek Correctional facility. The plaintiff, Ms. Tobie Putman, alleged that I continually made unconsensual contact with her, which put her in fear for her life. The prosecution had the burden of proving in court that I was guilty of the charge beyond a reasonable doubt. AS 11.41.270(a) Stalking in the 2nd Degree reads

"A person commits the crime of stalking in the

> second degree if the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member."

The critical element of this case is "recklessly placing another person in fear of death or physical injury." At trial the District Attorney failed to prove that Ms. Putman was in actual fear of death or physical injury of herself or her family. There was no evidence that indicated my contacts were "threatening" Ms. Putman or her family. At best, the prosecution only presented evidence that Ms. Putman received letters and e-mail messages, of which none were of a threatening nature. On the contrary, the contents were jokes and teasing messages that are no different from other users that chat on-line.

Ms. Putman alleged that I was following her when in fact we both lived within a mile from each other and used the same road system going to and from work. We worked right across from one another and we shopped at the same grocery store. Ms. Putman testified in court that she was behind me more than once a week going to work and that some times she was in front of me. Her actions did not indicate "fear." In fact, her actions showed "interest." Her actions showed me that she was interested in me. She waited every morning for me to show up on my way to work and she would follow me.

This whole matter started in the middle of August 1997, when I noticed Ms. Putman following me every day going to work and going home from work. I thought it was a coincidence seeing her every day for about three weeks because wherever I went I would see her. The first time Ms. Putman and I met was on September 3, 1997, when I was going home from work and noticed her walking near the high school. I stopped and asked her if she needed a ride and she accepted. I gave her a ride to her residence at 224 B

Behrends. We were chatting in the car when she told me that she worked at the Goldbelt Building. I asked her if she would like to go to dinner and she told me that she would be busy moving from her apartment. Ms. Putman said during the trial that she was afraid yet she moved to an apartment right across from the high school where she could watch me pass her place every day going back and forth to work.

On Friday, September 5, 1997, I went to the Goldbelt Building to see if I could find Ms. Putman, but I could not locate her. On this same day I went to her apartment on Behrends around 5:30 p.m. to talk to her but she was not home.

On the morning of September 10, 1997, I saw Ms. Putman entering her office building. I approached her and together we walked upstairs to her office and we talked. I asked her if she would like to go to dinner and she told me "I don't date but I will see you around." I then gave her my business card and told her to call me if she changed her mind. Ms. Putman testified in court under oath that September 10, 1997 was the first time she met me. Ms. Putman perjured herself because we first met on September 3, 1997, when she accepted a ride from me.

I sent my first letter to Ms. Putman on September 11, 1997. Ms. Putman read this letter out loud in court and made special mention of the "PS" which read "If you need help moving, I will be glad to help you (it is not a date)." How did I know Ms. Putman was moving? She told me when I gave her a ride, that first week in September. A few days later I called Ms. Putman at her office and she told me that she was upset that I went to her apartment without letting her know beforehand.

On Monday, September 15, 1997, I sent Ms. Putman a letter apologizing for going to her apartment without her knowledge. On September 18, 1997, I sent her another letter (see attachment #1) and asked her if she was trying to follow me while I was going home from work. I also asked her why she no longer parked her car in front of the Federal Building

on West 9th Street when she used to park there before she got mad at me. This letter was referred to in court but it was never read or shown to the jury by the District Attorney nor by Mr. Patrick Conheady, who was my attorney. This letter was not read to the jury in court because the contents of the letter would have shown the jury that Ms. Putman's behavior and her actions were encouraging and leading me on.

On November 6, 1997, I mailed Ms. Putman a post card (see attachment #2) and asked her why she parked her car in front of the Federal Building where I park my car and not in front of her office building. I also asked her if it was a hint to me.

On November 27, 1997, I wrote Ms. Putman a letter (see attachment #3) and asked her why she stopped making U-turns in front of my office window because prior to this she made U-turns in front of my office nearly every day. Ms. Putman knew right where my office was located, which to me meant that she was watching me or "stalking" me. Ms. Putman wanted me to see her making those U-turns. Ms. Putman's actions definitely told me that she was interested in me. Even after Ms. Putman called the Juneau Police she continued to make U-turns in front of my office window.

Some time in December just before Christmas at around 4:45 p.m. Ms. Putman called me at home from the A&P grocery store and asked if I was sending her Christmas cards. I did not answer her question. Instead, I asked her if she was still interested in me and she told me " How come you never told me you are married? I will teach you a lesson and I will get you for that." She found out that I am a married man, perhaps from her mother because she works at the Federal Building, and she wanted revenge.

On January 1, 1998, Ms. Putman called the police and they came to my home to advise me not to contact her. Yet, from September through December, Ms. Putman did not express dissatisfaction to me about my communicating her which lead me to believe that they were wanted and welcomed by her. She returned none of the cards and letters

and she did not refuse the flowers.

On January 12, 1998, I went to the Alaska Permanent Fund Corporation to inquire about a job for a friend of mine that lived out of state. The following day, January 13, 1998, Ms. Putman and her supervisor, Ms. Alison Browne, sent Mr. Jacobson to my place of work at the U.S. Department of the Interior to talk to me. Mr. Jacobson told me that "if we were outside he would treat this [meeting] differently." I considered Mr. Jacobson's behavior to be "threatening" and "harassment" of a Federal employee. On January 15, 1998, the Alaska Permanent Fund Corporation served me with a letter written by Ms. Browne, who is not only Ms. Putman's supervisor but also a friend of Mr. Conheady. Mr. Peter Bushre signed the letter on behalf of Mr. Byron Mallott, Executive Director, and it informed me that my actions disrupted their work place and instructed me to cease calling. This same day I contacted the Juneau Police to report the nature of Mr. Jacobson's visit. Because I felt I was being harassed by the Alaska Permanent Fund Corporation, I wrote a letter, dated January 16, 1998, (see attachment #4) to Senator Ted Stevens and informed him of the corporation's actions. On January 16, 1998, I also wrote a letter (see attachment #5) to the Alaska Permanent Fund Corporation and informed them that I considered their recent actions as "threatening, harassment and inappropriate." This letter was carbon copied to the Juneau Police Department, Governor Tony Knowles, the U.S. Federal Bureau of Investigation, Senator Ted Stevens, Ms. Putman, and the Director of Administration for the Alaska Permanent Fund Corporation. During all of this, Ms. Putman still acted and behaved as though she was interested in me. Wherever I went she would be there. She would call me at my office and at home several times a day and hang up. My phone number was unlisted and only a select group of people knew my number, including Ms. Putman, yet I got several hang-up calls from different places around the city. Some time in February I started sending Ms. Putman e-mail messages and played the same

"teasing" game she was playing with me. She could have deleted the messages if she did not want to read them but she did not.

Ms. Putman, her mother, friends, co-workers, the District Attorney, and the police all conspired against me and fabricated a story about the Egan highway incident. They alleged that I was following her on Egan Drive on March 2, 1998. However, she did not report the incident to the Police until March 5, 1998, three days later. The trial court tapes revealed that Ms. Putman's testimony did not match Arne Johnson's testimony. Mr. Johnson could not remember the actual circumstances of this incident. Both their statements were mis-statements of the facts (listen to court tape #1JUB-7588,7589) and both of them perjured themselves while under oath. Ms. Putman could have turned into her driveway if she was going home for lunch but she chose to race on Egan Highway. Before this incident we were always on the road together going to and from work and she never took evasive actions to try to "lose me" like she testified in the trial. I think Ms. Putman wanted to prove something to me and wanted to play a game with me. She had a new car and wanted to race it on the highway. She wanted to show off. This incident began when Ms. Putman signaled to turn right into her driveway. Instead, when she noticed me behind her, she knowingly and purposely changed her mind, went straight and turned left on Highland Drive, the road that enters Egan Highway beside the Breakwater. She waited for a break in traffic and entered the highway at a high rate of speed. I was behind her on Highland Drive waiting for another break in traffic and by the time I entered Egan Highway she was way ahead of me. When I reached the Salmon Creek intersection she was stopped by the traffic light and sitting on the right side of the highway with several cars in front of her. I was on the left side of the highway with fewer cars in front of me. Well before I reached the Vanderbilt traffic light, I was in front of her. I turned right to go to the gas station and she went straight. I got some gas at

Petro Express and went home for lunch afterward. I had an old beat up car that could not exceed 60 mph so I could not drive as fast as she alleged. The only reason I was able to catch up to her was because she had stopped at the traffic light. I did not make a U-turn and re-enter Egan Highway as she alleged. She testified that she saw me making a U-turn by using her rear view mirror. There was no way she could see through her rear view mirror what was happening with traffic turning right off of Egan Highway going towards the gas station. She created this story to gain revenge. I was not following her. It was a coincidence that we were both on the highway together just like any other time before when we have been on the road together.

On April 14, 1998, the Juneau Police arrested me and failed to read and give me the Miranda Rights. The Juneau Police took me to the Lemon Creek Correctional Facility and charged me with "Stalking." However, on April 9, 1998, a few days before my arrest, Ms. Putman came to the Federal Building to eat lunch at the same cafeteria that I eat my lunch. On April 10, 1998, a Friday evening, I was at the Hangar and so was Ms. Putman. She was upstairs with some of her friends and I was sitting downstairs at the bar with a co-worker. She saw me sitting at the bar so she came downstairs and made it a point to sit a few stools down from where I was sitting. She did not exhibit any fear and I did not attempt to talk with her. We were both at the Hangar for several hours. I had two witnesses testify in court that Ms. Putman could not have been in fear of her life because she always appeared at places that I frequently visited. Mr. Conheady inadequately questioned Ms. Putman about her actions and failed to convince the jury that she was not in fear of death of physical injury especially if she appeared at the same places I visited. She could have contacted the police any time between September and December if she was afraid for her life and if she felt as though she was being stalked but she did not. Her interest in me and her teasing behavior continued even after she called the police on January 1, 1998,

and until the day of the trial. The contents of my letter dated January 16, 1998, to the Alaska Permanent Fund Corporation made her and the corporation angry with me and they wanted to punish me by any means. Therefore, to save face with everybody that I carbon copied in my letter to the corporation, she filed charges against me to seek revenge. She did this because she was embarrassed in front of her employer and because her employer was embarrassed in front of higher government officials (see the carbon copies of attachment #5). This letter was not read to the jury because it did not support Ms. Putman's allegations. The fact of the matter is that this letter was not shared with the jury because it identified inappropriate behavior on her part and that of her employer. The corporation tried to take matters into their own hands by sending Mr. Jacobson to my office to threaten me rather than contact the police. If Ms. Putman really wanted me to stop contacting her she could have obtained a restraining order, but she wanted me to continue playing the game she started.

ARGUMENT

I

COURT ERRED IN FAILING TO DECLARE A MISTRIAL AFTER THE DISTRICT ATTORNEY REFERRED TO DEFENDANT'S FAILURE TO TESTIFY.

The District Attorney in his closing argument, said "I'm going to tell you what I remember about Mr. Conheady's opening statement about eye contact. My recollection was that he said Mr. Alhilawi had eye contact with Ms. Putman and I didn't hear that in the evidence." The District Attorney's statement refers to the fact that I failed to testify during the trial. The statement refers to an incident in April, when Ms. Putman claimed to be in fear of her life, where Ms. Putman and I were at the Hanger. She was upstairs and I was downstairs when we made eye contact then she came downstairs and sat about four or five stools away from me. Mr. Conheady made this statement on my behalf,

however, because I did not testify there was no evidence presented in court to corroborate the statement. The Judge failed to declare a mistrial when the District Attorney said that the evidence was not presented which eluded to the fact that I did not testify. The Judge should have said that the counsel is forbidden by the statute to make any comment which would create or tend to create a presumption against me from failure to testify. In **Wilson v. United States** (1893) 149 US 60,372 Ed 650, 13 S CT 614, the Supreme court found that the Wilson holding expressed the "spirit" of the privilege against self-incrimination, and the comments of the trial court and prosecutor in the present case were therefore in violation of the Fifth Amendment.

The District Court Judge knowingly and recklessly violated my right to use the Fifth Amendment and abused his discretion by not granting a mistrial, where the denial of a mistrial motion is found to have been "clearly erroneous". *See* **McBeth v. State**, 652 P.2d.120 (Alaska App. 1982).

II

COURT ERRED IN FAILING TO GIVE APPELLANT'S REQUESTED JURY INSTRUCTION IN ACCORDANCE WITH AS 11.81.620(b)(1).

Mr. Conheady wanted the jury to weigh the statute, i.e., that whatever was done would have been done because of my belief, reasonably held, that my actions were not or would not be unwelcome. Actions speak louder than words and Ms. Putman's actions for the first three months lead me to believe that she was interested in me. She accepted a ride from me. She could have refused the flowers and letters when they were delivered - but she did not, she kept them. She could have marked the cards "return to sender" but she did not. She could have deleted the e-mail messages rather than read them, but she didn't. She enjoyed the attention she was getting from me. She parked her car next to where I parked my car when she could have parked in the company parking lot. She frequently made U-turns right in front of my

office window to make sure I saw her. Even when her work schedule changed in December to 7:00 a.m. to 3:30 p.m. she still waited in front of my building at 8:00 a.m. when I arrived at work. Even though she was suppose to quit working at 3:30 p.m. she stayed around until 4:30 p.m. because she knew I quit work at that time. During this period she did not contact the police to complain about anything. It wasn't until she learned that I am a married man that she became angry and upset. Once she found out she became irritated and asked me why I did not tell her that I am a married man. She warned me that she would get me for this. Based on her actions, Mr. Conheady wanted the Judge to include these instructions to the jurors. I argue that the refusal of the District Court Judge to give an instruction on its own motion was clearly wrong. The Judge was biased throughout the trial and took the side of the District Attorney. A review the court tapes will reveal the comments made by the Judge.

III

INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO PROPERLY INVESTIGATE THE CASE AND PREPARE FOR TRIAL.

My trial attorney, Patrick Conheady, never expected this case to go to trial so he never really discussed with me his strategy. He was not prepared to go to trial and he never took our meetings seriously. Nearly all our meetings were at the Hanger after regular working hours. In the meetings I would explain to him what I believed happened between Ms. Putman and I. Each time Ms. Putman came to my place of work I told Mr. Conheady so he could use the information in court to show the jury that she was not in fear of her life. I informed Mr. Conheady that Ms. Putman was at the Federal Building on the morning of June 25, 1998 at 8:10 a.m. waiting for me to come to work. He failed to subpoena the Federal Building Security camera tapes as evidence that she is not fearful of death of physical injury because she continues to present herself in place where I can see her. He

never recorded any of the information I gave him. He failed to subpoena her previous boyfriend, who would have testified that Ms. Putman has a reputation for being a "tease" and for "leading men on" as she did with me. He failed to subpoena Police Officer Wilson, who would have provided testimony about our discussion and could have explained how he felt that everything was a misunderstanding between Ms. Putman and I. He failed to suppress evidence that was obtained and used against me in court when I was never given my Miranda rights at the time of my arrest and to this date have never been given to me. I told Mr. Conheady that I was never given my Miranda and he told me that it didn't matter because this charge was a misdemeanor and was easily defensible. Because I was never given my Miranda, all the evidence obtained and used against me in court should not have been entered as evidence in the trial. The case should have been dismissed on this basis alone, see **Miranda vs. Arizona**, (1966) 384 US 436,16 L ed 2d 694,86 S CT 1602,10 ALR 3d 974, and **Alaska State v. Cassell**, (1979, Alaska) 602 P 2d 410.

Discrimination in selection of jury occurred because Mr. Conheady failed to ensure that there were jurors of my own peers, which is a violation of the Fourteenth Amendment, see **Hernandez v. Texas** (1954)347 US 475,98L ED 866,74 S CT 667. When I questioned Mr. Conheady about not having any minorities or Alaska Natives as jurors, he said "they didn't show up." He also told me that he "wouldn't have an Alaska Native as a juror anyway." These were prejudicial comments made by my attorney. See id. at 693. Mr. Conheady violated Appellate Rule 209(b)(4) and violated Criminal Rule 39 by withdrawing as my attorney before he could file a motion for appeal and provide the memorandum of points. Mr. Conheady also failed to inform me of my legal rights throughout the course of preparing for the trial, during the trial, and upon conclusion of the trial. I trusted Mr. Conheady to represent me in a fair and impartial trial and this never occurred.

In many instances, the District Attorney was leading the witness. For example, when the District Attorney was questioning Ms. Putman about having lunch at the Federal Building cafeteria, he said "and since Mr. Alhilawi has been doing all this you stopped eating over there?" and she said "yes." In another example, the District Attorney asked Ms. Putman "did you get to eat your lunch that day?" and she said "I had eaten enough of it already. I wasn't hungry any more" and than she began laughing. He then asked Ms. Putman "had you had a chance to finish your lunch before you left?" and she had no response. Then the District Attorney prompted Ms. Putman by saying "If you were finished was there more food to eat if you hadn't seen Mr. Alhilawi?" Ms. Putman answered "yeah, we all still had food but we left." All throughout the District Attorney's direct examination of Ms. Putman his questions were "leading the witness." The District Attorney would not allow Ms. Putman to answer his questions in her own words and Mr. Conheady failed to object to the District Attorney's actions and line of questioning. A review of the court tapes will reveal that Mr. Conheady did not represent me adequately as my attorney.

Withdrawal of an attorney will not be allowed where there is no sufficient showing in support thereof and absent a proper substitution of attorneys. See **Organized Village of Kake v. Egan,** Op. No. 16, 354 P2d 1108 (Alaska 1960).

Trial counsel's unilateral and unformalized withdrawal of representation following [the] trial violated Appellate rules and Code of Professional Responsibility; fact that client instructed trial counsel to do nothing further in the case did not relieve trial counsel of duty to preserve client's right to appeal where instruction was expressly based on client's representation that new attorney would be handling the matter. See **Broeckel v. State,** Op. No. 1430, 900 P2d 1205 (Alaska App. 1995).

According to the Alaska Rules of Professional Conduct, the Preamble: A lawyer's Responsibilities, states

> "In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law."

The Client-Lawyer Relationship, Rule 1.1. (a) states

> "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Mr. Conheady was not prepared to represent me in this case. His inability to question the witnesses effectively helped to substantiate Ms. Putman's allegations rather than present to the jury factual information that would establish "reasonable doubt" to the allegations made against me. Mr. Conheady failed to provide me with proper counseling as to what to expect when this case went to trial as well as how the legal system works. Mr. Conheady's cross examination of the witnesses failed to present "reasonable doubt" to the jury because he was not prepared to go to trial. Mr. Conheady was not alert during the District Attorney's direct examination of Ms. Putman. If Mr. Conheady were prepared for trial he would have been able to challenge the testimony given by Ms. Putman and the other witnesses.

IV

JUDGE ERRED IN FAILING TO GIVE ME NOTICE OF APPEAL AND RIGHT FOR COURT APPOINTED ATTORNEY IF I CANNOT AFFORD ONE, IN ACCORDANCE WITH ALASKA RULES OF COURT,

CRIMINAL RULES, RULE 32.5(a)&(b). JUDGE ALSO ERRED IN FAILING TO ADVISE ME AS REQUIRED BY APPELLATE RULE 215(b) OF MY RIGHT TO APPEAL OR PETITION FOR REVIEW OF THE SENTENCE.

At the end of the trial, District Court Judge, Peter Froehlich, failed to advise me of my right to appeal the judgment of conviction in accordance with Alaska Rules of Court, Criminal Rule 32.5(a). Judge Froehlich failed to advise me of my right to counsel if I was unable to pay for a private attorney in accordance with Criminal Rule 32.5(b). At the end of the trial, Judge Froehlich immediately gave the sentence. However, upon issuing the sentence, Judge Froehlich failed to advise me of my right to appeal or petition the sentence in accordance with Appellate Rule 215(b). Judge Froehlich knowingly and recklessly violated the criminal and appellate rules in this case.

V

CONFLICT OF INTEREST BETWEEN DEFENDANT'S TRIAL LAWYER AND PLAINTIFF'S WITNESSES AND THE JURORS. ALSO, CONFLICT OF INTEREST BETWEEN THE JURORS AND THE WITNESSES.

Patrick Conheady is a friend of Alison Browne, who was a witness for and supervisor of Ms. Putman. Mr. Conheady also represented Mr. Jacobson in another matter. Mr. Jacobson is Anna's husband and Anna is a co-worker of Ms. Putman. Mr. Jacobson was the man that was sent to my office to harass and threaten me. Ms. Browne is also a friend of Mr. Ricky, one of the jurors who stated that he has been friends with Ms. Browne for over 30 years. Mr. Ricky stated that he did not recognize Ms. Browne's name when the jurors were shown a list of the witnesses. Mr. Ricky should have recognized Ms. Browne during the direct examination by the District Attorney. The Judge should have disqualified Mr. Ricky as a juror and not allowed him to continue on this case.

The remaining jurors were dismissed from the courtroom while the District Attorney, the Judge and Mr. Conheady questioned Mr. Ricky about his friendship with Ms. Browne. Mr. Ricky waited until the District Attorney was through with his direct examination of Ms. Browne before he mentioned to the judge by way of a handwritten note that he personally knew Ms. Browne.

Ms. Browne wrote the letter to me, dated January 12, 1998, for Mr. Peter Bushre's signature as acting Executive Director in Mr. Byron Mallott's absence. Ms. Browne testified that a staff member told her that I had visited the office to inquire about work. Her testimony about what another person in the office said is "hearsay" and shouldn't have been allowed as evidence. Mr. Conheady failed to object to this part of her testimony because they are friends. Ms. Browne testified that she called the Department of Law to ask how she should handle the situation. Mr. Conheady failed to verify Ms. Browne's statements and chose not to question her thoroughly because they are friends and he did not want to put any pressure on her. Mr. Conheady did not ask Ms. Browne to specify the number of telephone calls received. He did not ask her to explain in detail the contents of the telephone calls. Ms. Browne's testimony made the jury believe I contacted their office daily when in fact only a few calls were made directly to Ms. Putman on her direct line. Mr. Conheady failed to pursue this line of questioning because he is a friend of Ms. Browne. Their friendship prevented Mr. Conheady from pursuing an aggressive cross examination of Ms. Browne and further prevented him from adequately and effectively representing me as my attorney in this case.

Anna Jacobson testified that I visited their office [on January 12th] to inquire about employment. Ms. Jacobson testified that she did not know me when I gave her my name and address and asked to be included in their mailing list for internship positions. It was not until after I left the office that she called Ms. Putman and asked if I was the person

contacting her. Mr. Jacobson testified that Anna, his wife, was fearful but yet she did not know me when I came to the office so how could she be fearful. Mr. Conheady did not question Mr. and Mrs. Jacobson thoroughly about their involvement in this matter because Mr. Conheady represented Mr. Jacobson on another matter.

VI

DISTRICT ATTORNEY FAILED TO PROVE THAT THE PLAINTIFF WAS "IN FEAR OF DEATH OR PHYSICAL INJURY."

There was no physical evidence presented at trial to prove that Ms. Putman was in fear of death or physical injury. Ms. Putman stated that she was afraid and didn't know what I would do but these were only allegations. Ms. Putman testified that she slept with a gun beside her bed. The District Attorney did not present the gun as evidence, if she really owned a gun. Even if she does own a gun, the District Attorney failed to prove that I was the cause for her to have a gun beside her bed. Ms. Putman always presented herself in places that I frequently visited right up to the date of the trial. She changed her work schedule but she waited for me to get off work and she left work at the same time. She came and had lunch at the Federal Building cafeteria on April 9, 1998 and she stayed for more than 30 minutes before she decided to leave. She presented herself at the Hangar on April 10, 1998 and she stayed for several hours and even sat at the bar while I was there with a friend and never exhibited any fear. The District Attorney failed to provide evidence that I threatened her life or wanted to harm her and/or her family.

During the trial Ms. Putman did not exhibit fear. In fact, Ms. Putman was laughing when she was questioned by the District Attorney. Ms. Putman looked like she was having fun and did not act like she was in fear for her life as the District Attorney mentioned in his summation to the jury.

Ms. Putman was not afraid. Ms. Putman was angry

because I embarrassed her in front of her employer. She was so angry that she perjured herself several times while under oath. She fabricated the story about the Egan Highway incident. Her testimony about this incident did not match the story given by Mr. Arne Johnson. She did not report the incident to the Police until three days later. If she were afraid she would have reported it immediately. She perjured herself about our first meeting. She showed me where she lived. And, she already knew where I lived because I was renting from her old boyfriend's mother. She testified that she last visited her boyfriend's mother's place in August and then broke up with him. I believe she noticed me first and was watching me well before I noticed her in mid-August. She made it a point to present herself to me in several ways, i.e., parking her car where I parked my car, making the U-turns in front of my office window, going to the Hangar, eating lunch at the cafeteria. Ms. Putman's actions did not indicate fear and the District Attorney's direct examination failed to prove that she was in actual fear of death or physical injury.

CONCLUSION

Based upon the foregoing arguments, statement of facts and authority, Adnan Al-hilawi, Pro Se, respectfully requests that the Superior court reverse the District Court's judgment and set aside jury verdict, and enter a NOT GUILTY judgment. I also request that the Superior Court order all records and documents held by the Court Clerk, the District Attorney, Tongass Community Counseling, the trial attorney Patrick Conheady, the Public Defender Agency, the Juneau Police Department, and the Lemon Creek Correctional Facility, be expunged and returned to me.

DATED at Juneau, Alaska this 10th day of December, 1998.

s/Adnan Al-hilawi, Pro Se

CERTIFICATE OF SERVICE:

I certify that on the 10th day of December, 1998, I served a true and correct copy of the foregoing with attachments upon the District Attorney via court box at the Dimond Courthouse, the Public Defender Agency, via court box at the Dimond Courthouse.

s/Adnan Al-hilawi, Pro Se

Attachment

ATTACHMENT # 1

September 18,1997

Hi the beautiful accountant..
How are you? I was planning to come and see you on Friday morning, but I have changed my mind because of your meanness. Anyway I was coming to say that I am sorry for any trouble that I may have caused you for the past two weeks, and I hope there is no hard feeling. Also I was planning to kiss you and make up (I am just kidding..just kidding). It is easy to write to you rather than talking to face to face, because once you look at me it seems like your eyes have a magic and they make me forget what I wanted to say..There is an old song from my original country says "there is no liquor on the earth like the one you are pouring from your eyes". By the way, what happened to you today after work? Did you get lost between the old and the new apartment? Or you were trying to follow me? You used to park your car in front of the federal building before you got mad at me. How come you don't park there any more?? You look very attractive when you wear a skirt and a smile, so don't be mean and angry because you look different (life is too short to be mean and angry). Tobie, you were interested in me and you know it, otherwise I wouldn't try to talk to you if you weren't. It has been almost a year since I came to Juneau, and every day I tell my friends I have to leave this

city, I hate this city..but since I saw you I start liking this small city, and I will be missing it when I go to Florida.. Do you want to come with me to Florida (just kidding..), I don't think you could handle the sun over there. Remember you were mean and mad on last week when we had that beautiful sunny weather. In Florida you will be mean every day…
Maa alsalama (means goodbye in my language).

S/Adnan

PS: Beautiful and mean.. and I still like you. Strange isn't it?

ATTACHMENT #2

10/29/97
Marhaba (Hi) the prettiest women among all the women's from Babylon to Juneau and beyond….Do you know that Juneau was crying for you every day since you left, and wants you to come back.. Juneau without you it seams like missing something.. The mountains or the sea or the rains.. Welcome back ToTo..
Maa Alsalama and bosa for you (I will not translate bosa, because I don't think you will approve).

s/Adnan

11/6/97
Marhaba..The card that I sent you has two words misspelled in the first sentence. I have to repeat the sentence to make it sound better "The prettiest woman among all the women from Babylon to Juneau and beyond." By the way, I see you parked your car in front of the federal bldg. Is that a hint? Or you did not find a place in front of your work? Please..please say it is a hint!! Warmest regards, s/Adnan

ATTACHMENT #3

Hello Tobie.. November 27, 1997
How are you? How was your thanksgiving day? Are we ever going to become friends?? If we are, Please let me know. You could call me or send me an e-mail. I will be out of Juneau for about three weeks, but you could leave a message. I got use to see you every day. I miss your U-turns in front of my office window. How come you do not make the U-turns any more? Are you mad at me? Please don't be. Tobie, could we please start from that first day I met you?? Have a nice day.. s/Adnan

PS 1: Could you Please move your computer monitor to your right, it is blocking my view!!!
PS 2: If you say "no", you don't want to be my friend, then on my way back to Juneau I will jump off the plane (just kidding..).

ATTACHMENT #4

Adnan Alhilawi
P.O. Box 22437
Juneau, Alaska 99802

January 16, 1998

U.S. Senator Ted Stevens
709 W. 9th Street
Juneau, Alaska 99801

Dear Senator Stevens:

Attached please find a copy of a letter that I sent to the Alaska Permanent Fund Corporation.

On Monday, January 12, 1998, I visited the above corporation to inquire about their job opening for a friend of

mine. The front desk reception gave me some information and advised me to leave my name and address in order to send me more material by mail. I gave my name and address to the reception and I told her to send my regard to one of their employee that I knew, and I left the office.

On Tuesday, January 13, 1998, the above corporation sent me a person to threat and harass me. On Wednesday, January 14, they sent me another person hand delivering a letter from one of their staff.

I contacted the Juneau Police Department, but it seems the police are siding with the above corporation.

Your help in this matter is greatly appreciated.

Sincerely,
s/Adnan Alhilawi

ATTACHMENT #5

Adnan Alhilawi
P.O. Box 22437
Juneau, Alaska 99802

January 16, 1998

Mr. Peter Bushre
Alaska Permanent Fund Corporation
P.O. Box 25500
Juneau, Alaska 99802

Dear Mr. Bushre:

This is to inform you that your corporation is in violation of the State and Federal Laws in the following ways:

(1) On Tuesday, January 13, 1998, your office sent a person to my place of work, in the office of the United States Department of the Interior, threatening my life, harassing me and disrupting my legitimate work.

(2) Again, on Wednesday, January 14, 1998, your office sent a person to harass me and interrupting my work schedule, by hand delivering unsolicited correspondence from you.
(3) Your Director of Administration gave false allegation and fabricated stories about me to the Juneau Police Department.
(4) Apparently your corporation has no respect to the employees of the United States Federal Government and their offices.
(5) Your corporation has no respect to the State of Alaska and United States Federal Laws, by taking the law into your own hands and interfering with the police business.

I would like you to know that, even thought we are in Alaska, we are sti9ll in the United States of America and such act and behavior are not allowed in this country. Therefore my suggestion is to design and built one way highway for you, let us call it "The Permanent Fund Behavior Highway", to take you to a country were they allow such act and behavior.

Please be advised that any future contact from your office with me whether in person or by correspondence, will be treated as life threatening, act of violence and harassment against me and will be dealt with in the United States Federal Court. Also a possible law suit will be filed against your corporation.

Very respectfully yours,
S/Adnan Alhilawi

Marhaba/T
cc: United States Senator Ted Stevens
United States Federal Bureau of Investigations
State of Alaska Governor Tony Knowles
Juneau Police Department
APFC - Ms. Tobie Putman

APPENDIX F

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

Argued February 22, 1999 Decided May 24, 1999

Court of Appeals No. A-07245
Trial Court Case #1JU-98-00641 CR

Adnan Alhilawi,

Appellant

v.

State of Alaska,

Appellee.

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges

IT IS ORDERED, SUA SPONTE:

Adnan Al-Hilawi asks this court to review the conditions of release imposed on him by the superior court pending appeal. The procedural posture of this case is somewhat unusual because, as explained below, Al-Hilawi is currently serving his sentence.

Al-Hilawi was convicted of second-degree stalking in the district court; he was sentenced to 265 days' imprisonment with 200 days suspended on condition of his good behavior during a 5-year period of probation. Al-Hilawi appealed this conviction to the superior court. The superior court released Al-Hilawi on bail pending appeal, and thus Al-Hilawi's sentence of imprisonment was stayed under

Appellate Rule 603(b). However, the superior court later determined that Al-Hilawi had violated the terms of his release, and so the court remanded Al-Hilawi to prison.

Because Al-Hilawi was returned to prison, his sentence was no longer stayed. He served the 65 days of unsuspended jail time ordered by the sentencing court (the district court), and then he was released. Upon Al-Hilawi's release from prison, the superior court again imposed bail pending appeal: the court ordered Al-Hilawi to post $500 and to abide by certain conditions of release.

Seeking to have this court review the conditions of release, Al-Hilawi filed a "petition for hearing" in this court. Despite the title of Al-Hilawi's pleading, his case is not a petition for hearing: Al-Hilawi is not seeking review of a "final decision" of the superior court as defined in Appellate Rule 302(b). Al-Hilawi's case appears to a bail appeal, although not the usual bail appeal: he is not challenging the particular conditions of release established by the superior court, but rather he challenges the superior court's authority to set bail at all.

Normally, when a defendant appeals a criminal conviction, the defendant's sentence is stayed pending appeal. Bail is imposed to make sure (1) that defendant pose no danger to the community during their temporary reprieve from their jail sentence, and (2) that defendants return to serve their sentence if they lose their appeal. But Al-Hilawi's case is different. He has already served his 65 days of incarceration, and he is now serving the 5-year probation ordered by the district court. See Jackson v. State[1], construing the analogous provisions of Appellate Rule 206(a).

In other words, no portion of Al-Hilawi's sentence is stayed or otherwise affected by his appeal. He is on probation, and he is subject to the conditions of probation imposed by the sentencing court. If he loses his appeal, nothing will change.

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[1] 926 P.2d 1180 (Alaska App.1996).

Al-Hilawi argues that, under these circumstances, his conditions of release do not serve the normal purposes of bail and that it appears he is being penalized for filing an appeal. Under the facts of this case, Al-Hilawi's contentions appear to have merit. It is not clear to us why the superior court has restricted Al-Hilawi's travel and other activities pending appeal.

For these reasons,

(1) We deem Al-Hilawi's "petition for hearing" to be a bail appeal.

(2) This case is REMANDED to the superior court. The superior court is directed to re-examine its decision to impose bail (including non-monetary conditions of release) on Al-Hilawi.

(3) The superior court shall make findings concerning the reasons for the imposition of bail conditions. The superior court shall transmit its findings and ruling to this court on or before Monday, June 14, 1999.

Entered at the direction of the court.

Clerk of the Appellate Courts

S/Deputy Clerk

cc: Court of Appeals Judges
Central Staff
Trial Court Judge
Trial Court Appeals Clerk

Distribution:

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APPENDIX G

IN THE COURT OF APPEALS FOR THE STATE OF ALASKA FIRST JUDICIAL DISTRICT AT JUNEAU

[Filed February 22, 1999]

Case No. 1JU-S98-641 CR

ADNAN AL-HILAWI,
Appellant

v.

STATE OF ALASKA
Appellee

PETITION FOR HEARING TO VACATE CONDITIONS OF RELEASE IMPOSED BY DISTRICT COURT AND RE-AFFIRMED BY THE SUPERIOR COURT

In accordance with the "Order Allowing Public Defender To Withdraw" issued on December 13, 1998, and signed by Superior Court Judge Larry Weeks (copy attached), I, Adnan Al-hilawi, Pro Se, hereby appear before the Court of Appeals. I am submitting a petition for hearing requesting that the Court of Appeals review the Superior Court's decision to uphold conditions of release which were imposed upon me by the District Court on September 29, 1998 (copy attached).

On July 21, 1998 I was convicted of stalking in the second degree, a misdemeanor. I was given a 265-day sentence, with 200 days suspended and a $3,000 fine with $2,500 suspended (copy attached). I entered incarceration on July 28, 1998, with an established early date of release on the

65-day sentence being set for September 5, 1998. This early separation date consisted of 43 days of required incarceration, which included the 3 days I had previously served during my incarceration upon my initial arrest in April, 1998.

Prior to entering the Lemon Creek Correctional Center, on July 27, 1998 I filed a request and order for a Motion to Stay Judgement (copy attached) pending my appeal. After being incarcerated for 15 days, on August 11, 1998 Judge Larry Weeks granted my release from incarceration pending appeal (copy attached), with imposed conditions under AS 12.30.040. One of the conditions required that I enroll in, and commence the Alternative to Violence Program with Tongass Community Center within 10 days of my release from jail. Being unfamiliar with the procedures in communicating with the Court, on August 17, 1998 I filed a request and order form and attached a letter to Judge Carpeneti (copy attached) asking that the conditions of release be amended to exclude the Alternative to Violence requirement or to waive the required $85 fee. Due to loss of my income during incarceration, I was unable to provide the necessary $85 fee for the initial assessment. The Tongass Community Center told me they would wait for the decision of the court. The court failed to respond in a timely manner to my August 17, 1998 request. I then filed a second request and order form on August 24, 1998 (copy attached). On September 1, 1998 I was arrested and re-incarcerated for failure to comply with the condition of release to register with the Tongass Counseling Center within 10 days of my release from jail. Since I had served 18 days of the initially-required 43 days for early release from incarceration, I had 25 more days to serve, which would have expired on September 25, 1998. That day came and went. Not one time during this period of incarceration was an expected date of release communicated to me, either orally or in writing. I asked and asked about the date of release. Even the Prison Superintendent said it was unusual that the prison hadn't

received a release date from the District Court. I requested and was granted a hearing on September 29, 1998 (copy of court tape #1JUB-7736 enclosed) before District Court Judge Peter Froehlich. The hearing ended with my release from jail upon payment of a $500 cash performance bail (even though I served the required 43 days for early release from incarceration). Also, I was ordered to comply with the same conditions of release that were imposed upon me by Superior Court Judge Weeks on August 11, 1998

On November 4, 20, and 24 1998 (copies attached) I filed motions to the Superior Court that the September 29, 1998 Conditions of Release imposed by the District Court be vacated. Judge Larry Weeks denied my requests on November 25, 1998 (copy attached). On November 27, 1998 I filed another motion for reconsideration (copy attached).

I must also clarify, for the record, that, I was granted a Public Defender for the appeal process. My continued efforts to communicate with the Office of the Public Defender were being ignored. My November 4, 20, 24 and 27 requests also included motions that the Public Defender be released from handling my appeal. My request was granted by Superior Court Judge Weeks on December 13, 1998.

The trial is over, my jail sentence has been served, and my memorandum in support of points on appeal has been duly submitted and accepted.

Now, I am requesting that the Court of Appeals review the imposed conditions of release. As of this date, I have served the imposed period of incarceration, and supposedly, I am now serving a 5-year probationary period. Although I have served my sentence, I am still being forced to abide by the conditions of release imposed by the court on September 29, 1998. The way I see it, I am on probation even while the appeal is pending. I have not requested a stay of my probation pending the appeal. How can conditions of release be imposed after I have served my period of incarceration? The picture is: I have an appeal pending and

while it is pending, I am bound by specific conditions of release from my already served jail sentence. I realize that I am a novice in matters of judicial procedure, but this does not seem right. The presently imposed conditions are stricter than my probation conditions. What really has me confused is - - - what conditions am I supposed to be adhering to? The conditions of release imposed on September 29, 1998 or the probationary period that I should be serving now since I have served my period of incarceration? My probation conditions do not impose a curfew, or require me to be at work during work hours, or to not consume alcohol or drugs or not to enter premises where alcohol is being sold or consumed. The conditions of release require that I do not consume alcohol. How did alcohol enter this picture? My conviction was not an alcohol-related misdemeanor.

On September 1, 1998, when I was arrested and re-incarcerated, my stay of sentence pending appeal under Rule 206(a)(1) was voided, which also included any conditions of release that were imposed on August 11, 1998. I have yet to receive a definitive answer as to why I am being subjected to the conditions of release placed upon me when I completed my period on incarceration.

The State alleges that I am a "dangerous person"; therefore, I must be subject to the conditions of release. I am not a dangerous person. I respectfully request that the Court of Appeals investigate the allegation by the State that I am a "dangerous person." I have never had any type of previous criminal history. Is the State of Alaska discriminating against me?

The State has imposed the conditions of release as well as required me to post a $500 bail when I already completed my sentence simply because I have filed an appeal on my conviction. If I had not filed an appeal, the conditions of release would not be imposed, I would have been released from jail without posting bail, and I would be considered on probation since I would have already completed my sentence. Ms. Julia Moudy, the first court-appointed Public Defender at

my bail hearing held on September 29, 1998 made the following argument to Judge Froehlich (copy of court tape #1JUB -7736 enclosed):

> "I would point out that I guess in my opinion, I don't believe that bail should have been set in this case. Because from what he told the court initially, he went and talked to the people at Tongass and I don't think there has been an evidentiary hearing on that issue. He went and talked to the people at Tongass and for some reason they either told him that he didn't need to come back until his case was done or he told them he didn't have the money and they told him to come back at a later point. So, I believe that before there's an amount of bail set for a violation of release conditions there needs to be an evidentiary hearing set and the people with whom he spoke at Tongass put under oath and examined as to exactly what the circumstances were. I don't believe that there's an appearance issue. I think that he has a home here that he has purchased, he has a job here that's pretty stable, he's been here for a while, and I haven't heard of any failure to appear. So, I think, the issue that Mr. Brower has addressed is safety of the community. **And, I just frankly think that while it may have been a serious charge he was convicted of, it was a misdemeanor, he's served his sentence, he's essentially being forced [emphasis added] to either choose between his appeal and be on bail. OR, abandon his appeal and get released because he's served his sentence and the state can then choose to file a petition to revoke and the court can hear**

that issue. I think Mr. Alhilawi has been in kind of a 'catch 22' situation and I think he's been in jail long enough to understand the import of following orders of the court and you know if there's a misunderstanding making sure he clears that misunderstanding up. I think the fact that he's been in jail for five (5) weeks on this kind of an issue when if the state had petitioned to revoke his probation he certainly would not have got that kind of a condition for violating his probation. The court probably would have simply said go back to Tongass. **There hasn't been any issue about him re-contacting this woman or contacting anybody in a similar way. And, holding him in jail, frankly, I think amounts to cruel and unusual punishment almost. I mean, I've never seen a situation like this where a person's been kept in jail for such a long time for such a minor issue as this is.** And, I don't think that it's unreasonable for the court to say that he has to go to Tongass while this is pending. **But based on just an allegation that he didn't contact Tongass or that he didn't follow through, with no evidentiary hearing, no person coming under oath and being examined.** I just frankly think that that's more than enough sanctioned for this kind of a situation. He should be released O.R. with the conditions of release being that he stay in contact with the Public Defender Agency, that he follow through with Tongass, that he stay employed, that he not have access to internet or whatever the other conditions of release were and I think that that's going to be enough to assure the two concerns that the court has.

.....and I have to say the unusual way in which this case has been handled."

Sworn under oath was Ms. Denise Goodface, Personnel Officer for the Bureau of Indian Affairs. She testified and stated the following:

> "I just want to go on record that Mr. Alhilawi is the victim of some prejudice from our office. We cannot prove it. We know where it's coming from and if this thing got blown way up we would probably have a lot of people testify that this man is the victim of discrimination because he is of Eastern descent. Now, he, under no circumstances, does this man possess a threat to anybody at our facility. We have about five people that are riling up the whole federal building. We know who they are and he is not a threat."

Judge Froehlich cut Ms. Goodface's testimony off and asked the Public Defender and the District Attorney if they wanted to ask any further questions and both stated they had no questions to ask. The Judge further questioned Ms. Goodface and asked "just to clarify then, as the Personnel Officer, are you the supervisor of Mr. Alhilawi?" Ms. Goodface replied "no, but I'm the supervisor of all the employee relations activities that take place." Judge Froehlich then stated "so you handle the records of the employees?" Ms. Goodface said "all of the problem cases." Mr. Brower questioned Ms. Goodface and asked "are you the spokesperson for the BIA in this area?" Ms. Goodface replied "one of them." Mr. Brower then asked "who else would be a spokesperson?" Ms. Goodface replied "the Area Director." Mr. Brower asked "who is the Area Director?" Ms. Goodface replied "Niles Cesar. You do have a document on file from the Area Director requesting that he come back to work. We could

provide other documentation if you want." Mr. Brower then asked Ms. Goodface "let me ask you another question. Are you here in capacity as a friend of Mr. Alhilawi or as a spokesperson for the BIA?" Ms. Goodface replied "right now I am a spokesperson for the BIA. I've come basically to see why this employee, what is happening legally to this employee, as to why he's not being allowed to return to duty. I'm here to examine that as a Personnel Officer. I can't sit back there and say anymore. I had to do a response to you saying he's a threat." Judge Froehlich then asked Ms. Goodface to step down from the witness stand. Judge Froehlich then made the following comments:

> "My point is that, I think, having sat through the trial and heard a lot of detail about Mr. Alhilawi's crime and other things, other observations related to his attitude, and the way he views people and what other people are doing and what he's doing and so I think that he is a dangerous person. And that is why I sentenced him the way I sentenced him, that's why I gave him the conditions of probation that I gave him which Judge Weeks made conditions of release. That's why I set bail the way I've set it. I think that some money is necessary to make sure that he does not present a danger to anyone in this community including Ms. Putman and, if he's out of jail. And, there was indication from the affidavit sworn under oath from Tongass Community Counseling that he didn't even make some minimal steps I don't have the affidavit flagged right handy here but he has stated oh because he didn't have any money or something like that. But, and Ms. Moudy's right, it hasn't been looked into. But the indications again are that it's difficult to just

try to minimize the danger he presents to the community by telling him what to do or giving him conditions that he has to satisfy because he thinks of ways or comes up with ways around them or reasons why he shouldn't do it or it doesn't apply to him. And, so I think that's exactly the kind of person, especially in light of the nature of his offense, for whom bail is important and to try to minimize the danger he presents if he's not in custody. And so I will ah and on the other hand I think that bail is something that we should try to set it at a level that can be attained so that people can post it and then we do have security that conditions will be met intended to minimize danger. So, at $750 apparently we've whittled down from $5,000 to $750 and I'm gonna reduce it again and hope that maybe this will get posted and then this case will go to Superior Court and can be dealt with there. And, I will reduce it to $500 cash performance bail. I don't think a bond is sufficient because we're so concerned, I'm so concerned about compliance with conditions of release which include all of those set by Judge Weeks on August 11th."

Ms. Moudy then made the following argument with Judge Froehlich regarding the affidavit submitted by Tongass Community Counseling:

> "I guess I'd ask the court to schedule an evidentiary hearing on the Tongass issue for"

Judge Froehlich interrupts Ms. Moudy and made the following comments:

> "I don't think, I think it's probably up to the Superior Court to do that. Judge Weeks set these. What's the purpose of the evidentiary hearing?"

Ms. Moudy then argued:

> "Because I think that as the court knows, sometimes those Tongass affidavits are just not correct or they're not accurate or they're not found by the court to be a reliable enough indicator that what the Tongass representative swore out is true. And, I think in this case that that's the only issue that we're dealing with. I think that the court needs to hear from the person and give Mr. Alhilawi a chance to testify under oath."

Mr. Brower objected to Ms. Moudy's argument and stated "I think it is in the Superior Court because the conditions were set by the Superior Court." Ms. Moudy stated "I guess I'm not sure then why we're here and maybe that's because I'm not" and then Judge Froehlich interrupted her and said "Well, I don't know either. I've tried to, to well to (he stutters). The Superior Court seems to have referred it back. It's been sent upstairs and back down and so I'll set a hearing on this for this Thursday at 10:00 and we don't have a lot of time." Ms. Moudy asked for the hearing to be held on a different date because she was going to attend the Public Defender's conference. She asked that the hearing be set on Monday, Tuesday or Wednesday. Judge Froehlich indicated it could be set before Magistrate Sivertson and Ms. Moudy objected by stating "No. I do not want to have Magistrate Sivertson hear this case so if the court could schedule for another time." The hearing was scheduled for Thursday, October 15th at 10:00 am for evidentiary hearing concerning the Tongass affidavit.

If I drop my appeal, there would be no conditions of

release. Because I have not dropped my appeal, the State continues to fervently allege that I am a dangerous person; therefore, continues to impose the conditions of release. (It is interesting to note that Ms. Julia Moudy has been transferred to the Anchorage Office of the Public Defender after making this statement in the September hearing.)

Judge Froehlich's comments regarding the way I view people, my attitude, the crime and other things, are without merit. I never testified during the trial so he has no basis to make a judgement call or to make assumptions on my perceptions and attitude towards people. His comments are based solely on his observations of me during the trial. He disregarded the testimony of Ms. Goodface and Ms. Moudy in my defense. Judge Froehlich's method of communication, his statements and behavior in court are prejudicial and discriminatory towards me and are a violation to my human rights.

Based on the above arguments the District Court and the Superior Court have no justification to impose the conditions of release upon me. Imposing bail and conditions of release after serving my sentence is a complete violation of the law. I should be subject to conditions of probation only. I respectfully request that the Court of Appeals review the evidence presented and order that the conditions of release be vacated and that bail be returned to me.

DATED at Juneau, Alaska this 22nd day of February, 1999.

s/Adnan Al-hilawi, Pro Se

CERTIFICATE OF SERVICE:

I certify that on the 22nd day of February, 1999, I served a true and correct copy of the foregoing upon the Court of Appeals via court clerk at the Dimond Courthouse; David Brower, District Attorney, via court box at the Dimond Courthouse; and, the Superior Court via court clerk at the Dimond Courthouse.

By: s/ Adnan Al-hilawi, Pro Se